PREFACE

This edition of California Local Probate Rules replaces the 2009 edition. All local probate rules appear in this book, together with the California Probate Rules of Court.

The rules in this book are current as of January 1, 2010. Among all the counties, one or two are making changes in rules at any given time. Although the changes are usually minor, it is wise to check with the clerks if you are using this volume after its cutoff date; failure to follow the rules might have important consequences. CEB expects to replace this volume annually.

We want to thank the county clerks, probate clerks, and judges of all counties and the Judicial Council; all have been most helpful.

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Alameda County
Probate Policy Manual

Effective January 1, 2010

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TITLE 7.
PROBATE RULES

7.1. Title

The rules in this title may be referred to as the Local Probate Rules

Rule 7.1 adopted effective January 1, 2008.

CHAPTER 1.
GENERAL PROVISIONS

7.5. Special settings

An ex parte application must be submitted to the court to add any matter on a calendar that is full. Only emergency situations will be considered for such special placement.

Rule 7.5 amended and renumbered effective January 1, 2008; adopted as rule 12.1.1.2 effective May 19, 1998.

7.10. "Pre-grant" procedures

(a) Definition of "pre-grant"

A "pre-grant" is a tentative grant of a petition before the scheduled hearing.

(b) Review before hearing

Matters appearing on the calendar will be reviewed and may be designated as a "pre-grant".

(c) Qualification for "pre-grant" status

To qualify for "pre-grant" status, all supporting documents and a proposed order must be submitted at least two days before the scheduled hearing.

(d) Procedure for "pre-grants"

If a matter is designated as a "pre-grant", the petitioner or moving party is not required to appear at the scheduled hearing. If an objection is filed before the hearing, or one is made at the hearing, the court may grant a continuance to allow a written objection to be filed and served.

Rule 7.10 amended and renumbered effective January 1, 2008; adopted as rule 12.1.5 effective May 19, 1998; previously amended July 1, 1999 and January 1, 2004.

CHAPTER 2.
[RESERVED]

CHAPTER 3.
PLEADINGS

7.150. Copy of will and codicil

A copy of each will and codicil must be attached to the petition for probate. In addition, a typewritten copy of each holographic document must be attached.

Rule 7.150 amended and renumbered effective January 1, 2008; adopted as rule 12.2.2.4 effective May 19, 1998.

CHAPTERS 4 THROUGH 9.
[RESERVED]

CHAPTER 10.
SALES OF REAL AND PERSONAL PROPERTY IN DECEDENT'S ESTATES

7.300. Reappraisals

(a) When reappraisal is required

When the date of the confirmation hearing is more than one year after date of death, a reappraisal for sale must be filed with the court before the confirmation hearing can proceed.

(b) Responsibility for performing reappraisal

Reappraisals must be made by the probate referee unless the court has waived appointment of the referee.

(c) Contents

The following information should be inserted in the reappraisal for sale immediately after the legal description of the real property:

(1) The appraised value as of the date of death.

(2) The appraised value as of the date of the appraisal.

Rule 7.300 amended and renumbered effective January 1, 2008; adopted as rule 12.8.1 effective May 19, 1998.

7.310. Cash deposit on bids for real property

Bids for the purchase of real property must be accompanied by a minimum of ten percent of the amount bid. When an overbid is made in court, the bidder must submit cash, money order, or certified check at the time of the hearing in the amount of ten percent of the minimum overbid.

Rule 7.310 amended and renumbered effective January 1, 2008; adopted as rule 12.8.4 effective May 19, 1998.

7.320. Disclosure of extraordinary costs

(a) Disclosure of extraordinary costs in petition

The petition must include a full disclosure of all extraordinary costs that the estate will incur as a result of the sale. Such costs include, but are not limited to, termite and other repairs, lender's "points", loan fees, and nonrecurring closing costs. The exact amounts required or the maximum that the estate will be required to pay must be disclosed in the petition and included in the order.

(b) Deduction of extraordinary costs

Extraordinary costs will be deducted from the gross bid, and the resulting amount will be used for the following purposes:

(1) To determine if the sale is within ninety percent of the appraised value;

(2) To determine the base number against which overbids are made; and

(3) To determine the real estate broker's commission.

(c) Contents of petition

The amounts described in the preceding subdivision must be set forth in an attachment to the petition.

Rule 7.320 amended and renumbered effective January 1, 2008; adopted as rule 12.8.7 effective May 19, 1998.

7.330. Notice of confirmation hearing

In addition to complying with the requirements for notice that are contained in Probate Code section 10308, subdivision (c), notice of the hearing for confirmation of a sale of real property must be mailed at least 15 days prior to the hearing date to all heirs and beneficiaries who may have an interest in the subject real property.

Rule 7.330 amended and renumbered effective January 1, 2008; adopted as rule 12.8.8 effective May 19, 1998.

7.340. Appearance by bidders

Any potential bidders and their representatives must appear at the time the petition for confirmation of sale is heard.

Rule 7.340 amended and renumbered effective January 1, 2008; adopted as rule 12.8.9 effective May 19, 1998.

7.350. Sale of specifically devised or bequeathed property

On the sale of any property that was specifically devised or bequeathed, the petitioner must either serve notice of the time and place of the hearing on the petition to confirm the sale to the specific devisee or legatee or the consent of the devisee or legatee to such sale must be filed with the court.

Rule 7.350 amended and renumbered effective January 1, 2008; adopted as rule 12.8.12 effective May 19, 1998.

7.360. Sale of securities

(a) Verified petition required for authorization to sell securities

A verified petition for authorization of sale of stocks, bonds or other securities described in Probate Code section 10200 must contain an allegation regarding any request for special notice and compliance with such request and one or more of the following:

(1) A statement as to necessity for sale, giving the reasons the sale is necessary, for instance for payment of taxes, expenses of administration, or existence of an indivisible number of shares.

(2) The consent or request of heirs.

(3) If the securities are specifically bequeathed, the petition must so state and the written consent of the legatee must be filed.

(4) An allegation that a power of sale is conferred by the will.

(b) Sale of unlisted securities

If securities to be sold are not listed on an established stock or bond exchange, they may be sold at a minimum price per share or bond, based on a recent market quotation, as set forth in the petition. The market quotation may be obtained from financial publications or from securities brokers. If such securities are closely held, or there are no recent market quotations available, the petition should set forth the basis for fixing the minimum sales price, for example by reference to the Inventory and Appraisal value.

Rule 7.360 amended and renumbered effective January 1, 2008; adopted as rule 12.8.13 effective May 19, 1998.

CHAPTER 11.
[RESERVED]

CHAPTER 12.
ACCOUNTS AND REPORTS OF EXECUTORS AND ADMINISTRATORS

7.380. Notation of omitted schedules

Where a particular schedule is unnecessary, it need not be included and that fact must be noted in the Summary of Account with the word "none" in the blank provided for the total from the schedule.

Rule 7.380 amended and renumbered effective January 1, 2008; adopted as rule 12.9.1.2 effective May 19, 1998; previously

amended July 1, 1999.

7.390. Contents of account

The account and report must contain the following material:

(1) The beginning and ending dates of the account.

(2) A detailed description of all receipts and all disbursements of the fiduciary.

(3) An explanation either in the account or in the report accompanying the account for any item that is not self-explanatory.

(4) Receipts indicating the date of receipt, the source of the payment, and the amount. Each receipt from a source that pays more frequently than once a year must be described; a lump sum amount is not permissible.

(5) A description of all disbursements indicating the date of the expenditure and the nature of the expense, its purpose, and the amount.

Rule *7.390* amended and renumbered effective January 1, 2008; adopted as rule 12.9.1.3 effective May 19, 1998; previously amended July 1, 1999.

CHAPTER 13
[RESERVED]

CHAPTER 14.
PRELIMINARY AND FINAL DISTRIBUTIONS

7.400. FORM OF DECREES

A decree of distribution must be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as the decedent's will. If the distribution includes any interest in real property, the legal description, including the assessor's parcel number, must be included in the body of the decree or in an attachment incorporated by reference.

Rule *7.400* moved to Chapter 14 effective July 1, 2008; adopted as rule 12.11.7 effective May 19, 1998; previously amended July 1, 1999; previously amended, renumbered, and placed under Chapter 15 effective January 1, 2008.

CHAPTER 15.
COMPENSATION OF PERSONAL REPRESENTATIVES AND ATTORNEYS

7.410. EXTRAORDINARY COMPENSATION WHEN STATUTORY COMPENSATION EXCEEDS $20,000

Whenever statutory compensation exceeds $20,000 and the attorney or personal representative requests extraordinary compensation that exceed the amounts of rules *7.420* or *7.430* below, the request must be supported with a declaration that outlines all the ordinary and extraordinary services that were provided.

Rule *7.410* reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.6.2 effective May 19, 1998; previously amended January 1, 2004; repealed effective January 1, 2008.

7.420. EXTRAORDINARY COMPENSATION FOR SALES OF REAL PROPERTY

The court will customarily award the following amounts as extraordinary compensation for attorneys without further supporting declaration:

(1) One thousand dollars for court-confirmed sales of real property; and,

(2) Seven hundred fifty dollars for non court-confirmed sales of real property under the Independent Administration of Estates Act.

Rule *7.420* reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.7 effective May 19, 1998; repealed effective January 1, 2008.

7.430. EXTRAORDINARY COMPENSATION FOR PREPARATION OF TAX RETURNS

The court will customarily award $1,500 as extraordinary compensation for attorneys or personal representatives for the preparation of both federal and California estate tax returns without requiring a supporting declaration.

Rule 7.430 reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.8.1 effective May 19, 1998; repealed effective January 1, 2008.

CHAPTERS 16 THROUGH 18.
[RESERVED]

CHAPTER 19.
TRUSTS

7.500. Requirements for trustee's accounts

Accounts filed by trustees must conform to the requirements in rule 7.390.

Rule 7.500 amended and renumbered effective January 1, 2008; adopted as rule 12.16.1.1 effective May 19, 1998.

7.510. Contents of first account

The first account filed must clearly reconcile the amount first chargeable with the decree of distribution of the estate from which the property was received.

Rule 7.510 amended and renumbered effective January 1, 2008; adopted as rule 12.16.1.2 effective May 19, 1998.

7.520. Description of principal and income

Receipts and disbursements must be allocated between principal receipts and disbursements and income receipts and disbursements.

Rule 7.520 amended and renumbered effective January 1, 2008; adopted as rule 12.16.2 effective May 19, 1998.

7.530. Frequency for filing accounts

Trustees must file accounts at least every two years. The fact that an account covers more than a two-year period of time will not constitute grounds for deviation from any of the normal requirements of an account.

Rule 7.530 amended and renumbered effective January 1, 2008; adopted as rule 12.16.5 effective May 19, 1998; previously amended effective July 1, 1999.

7.540. Service on beneficiaries when power sought is not conferred

When the trustee seeks instructions to exercise a power not conferred by the will, a copy of the petition must be served by mail on all beneficiaries.

Rule 7.540 amended and renumbered effective January 1, 2008; adopted as rule 12.16.7 effective May 19, 1998; previously amended effective July 1, 1999.

7.550. Bond for trustee

Trustees appointed by the court are subject to the same rules as personal representatives pertaining to the posting of bond.

Rule 7.550 amended and renumbered effective January 1, 2008; adopted as rule 12.16.9.1 effective May 19, 1998; previously amended July 1, 1999 and January 1, 2002.

CHAPTER 20.
[RESERVED]

CHAPTER 21.
GUARDIANSHIPS

7.710. Notice to parties in related actions

Notice of the petition to appoint a guardian must be given to persons not otherwise entitled to notice who are parties to any other

proceeding to appoint a guardian for the minor if such proceedings are known to the petitioner at the time of filing.

Rule 7.710 amended and renumbered effective January 1, 2008; adopted as rule 12.14.1.3 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

7.720. Appearance of proposed guardian and minor

The proposed guardian and the proposed ward, if he or she is 12 years old or older, must attend the hearing to establish a guardianship of a minor unless the court excuses the appearance of the proposed ward for good cause. The court may require the appearance of a proposed ward who is under 12 if the court determines it is in the proposed ward's best interest to attend the hearing.

Rule 7.720 amended and renumbered effective January 1, 2008; adopted as rule 12.14.1.11 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

7.730. Waiver of court investigator fee

No court investigator fee will be imposed in any case in which a fee waiver has been approved by the court.

Rule 7.730 amended and renumbered effective January 1, 2008; adopted as rule 12.14.3.5 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

7.740. Notice of hearings on petitions for temporary guardianship

(a) Notice of hearings on petitions for temporary guardianships

If the court determines that a hearing on the petition for a temporary guardianship is necessary, the court will send notice to the attorney and petitioner. The attorney or the petitioner must serve a copy of the notice on those required to receive notice and file proof of service with the court.

(b) Notice of hearing following grant of ex parte application for temporary guardianship

If the request for a temporary guardianship is granted following review of an ex parte application and a hearing on the permanent guardianship is more than 30 days away, a hearing to reconsider the temporary guardianship will be set by the court and notice provided to the attorney or the petitioner. The attorney or the petitioner must serve a copy of the notice on those required to receive notice and file proof of service with the court.

Rule 7.740 amended and renumbered effective January 1, 2008; adopted as rule 12.14.4.1 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

7.750. Inventory and appraisal required

An inventory must be filed in all cases where there is a guardianship of the estate, even in a case where relief from the requirement of filing accountings may be sought under Probate Code section 2628. When assets are not in the possession of the guardian, the inventory must state who has possession of the assets.

Rule 7.750 amended and renumbered effective January 1, 2008; adopted as rule 12.14.7.1 effective May 19, 1998.

7.760. Contents of inventories in no or cash-only asset cases

(a) No asset or cash-only asset estates

When there are no assets or the assets are entirely cash, the inventory need not be submitted to a referee for appraisement. However, it must be filed with the court.

(b) Public benefit estates

If the ward receives Veterans, Social Security, Temporary Aid to Needy Families, or other periodic benefits, the inventory must indicate the amount received each month and the date when payments commenced.

Rule 7.760 amended and renumbered effective January 1, 2008; adopted as rules 12.14.7.3 and 12.14.7.4 effective May 19, 1998.

7.780. Accounts in guardianship proceedings

(a) Frequency of accounts

(1) Guardianship accounts must be filed after the first anniversary of the establishment of the guardianship and biennially thereafter. The account must be filed within 60 days after the anniversary date.

(2) Successor guardians must file an accounting one-year after the successor appointment date and biennially thereafter.

(b) Presence of ward necessary if final account waived

The court ordinarily will not approve a ward's waiver of the final account unless the ward is present at the time of hearing and competent to answer questions by the court.

(c) Reports accompanying accounts

In addition to the contents required by Probate Code section 1064, the report accompanying an account must contain the following:

(1) A statement of the age, health, and the present address of the ward;

(2) If income-producing property is inventoried in the guardianship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;

(3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a guardian or the processing of any documents related to a guardian;

(4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a guardian or any processing of any documents related to a guardian;

(5) Whether the guardian, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and

(6) Whether the guardian has sold, leased, or rented any real or personal property to any person with whom the guardian has a family or affiliate relationship as defined in Probate Code section 2359, subdivision (c)(2) and Probate Code section 2403, subdivision (c)(2).

Rule 7.780 amended and renumbered effective January 1, 2008; adopted as rule 12.14.8 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

7.790. Requirements if use of estate is sought to support ward

(a) Disclosure of benefits

If the minor's parent or parents are deceased, the guardian must disclose whether the minor is receiving Social Security or other survivor benefits, the amount of the benefits, why the benefits are inadequate to support the minor and why it is in the best interests of the minor to use the estate for the minor's care and support.

(b) Explanation of parent's inability to support ward

The petition for authority to expend funds for support must contain a detailed explanation, including financial statements, of the parent's inability to support the child. If the petition does not contain the required detailed statement, the parent or guardian must be present at the hearing to give testimony.

(c) Requirement for request for compensation

The petition for compensation must be accompanied by a declaration setting forth the hours spent, the services performed by the guardian and the attorney, and the hourly rate of each person providing those services.

Rule 7.790 amended and renumbered effective January 1, 2008; adopted as rule 12.14.9 effective May 19, 1998; previously amended January 1, 2004.

CHAPTER 22.
CONSERVATORSHIPS

7.800. Hearing on the petition for appointment

Upon filing of a petition for appointment of a conservator, the clerk will set the matter for hearing and issue a citation. If service of the citation is incomplete on the return date, it cannot be perfected by continuance and completion of service except by issuance of an amended citation. In such circumstances the original citation must be filed showing no service. Service of a citation will not ordinarily be waived.

Rule 7.800 amended and renumbered effective January 1, 2008; adopted as rule 12.15.1.2 effective May 19, 1998; previously amended January 1, 2004.

7.810. GENERAL PLAN

Within 90 days of appointment by the court, the conservator must file a general plan for the care, custody, and control of the conservatee, which must include a plan for meeting the financial needs of the conservatee, and serve it on the conservatee, any attorney for the conservatee, the Court Investigator's Office, and any person requesting special notice.

Rule 7.810 reenacted and renumbered effective July 1, 2008; adopted as rule 12.15.7 effective May 19, 1998; previously amended July 1, 1999; repealed effective January 1, 2008.

7.820. APPOINTMENT OF LEGAL COUNSEL FOR CONSERVATEES AND PROPOSED CONSERVATEES

(1) The court will appoint the Alameda County Public Defender as legal counsel if the conservatee or proposed conservatee is developmentally disabled or indigent.

(2) The court will appoint Legal Assistance for Seniors as legal counsel if the conservatee or proposed conservatee is neither developmentally disabled nor indigent.

(3) When a conservatee or proposed conservatee has independently retained legal counsel then the representation is subject to court approval.

Rule 7.820 reenacted and renumbered effective July 1, 2008; adopted as rule 12.15.17 effective May 19, 1998; previously amended January 1, 2002; repealed effective January 1, 2008.

7.830. Payment of court investigator fees

The following provisions govern payment of court investigator fees.

(a) Time for paying assessments

Court investigator assessments for reports must be paid before the hearing on the general plan. All other assessments must be paid before approval of the next accounting. The Court Investigator's Office will bill the estate or, where applicable, any trust of which the conservatee is a beneficiary.

(b) Conservator required to provide address

The conservator must provide the Court Investigator's Office with the current address of the trustee of any trust of which the conservatee is a beneficiary.

Rule 7.830 amended and renumbered effective January 1, 2008; adopted as rule 12.15.3.6 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

7.840. Disclosure of benefits received

If the conservatee receives Veterans, Social Security, Temporary Aid to Needy Families, or other periodic benefits, the inventory must indicate the amount each month and the date when payments commenced.

Rule 7.840 amended and renumbered effective January 1, 2008; adopted as rule 12.15.7.6 effective May 19, 1998; previously amended July 1, 1999.

7.860. Reports accompanying accounts

In addition to the contents required by Probate Code section 1064, the report accompanying an account must contain the following:

(1) The present address of the conservatee;

(2) If income-producing property is inventoried in the conservatorship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;

(3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or the processing of any documents related to a conservator;

(4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or any processing of any documents related to a conservator;

(5) Whether the conservator, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and

(6) Whether the conservator has sold, leased, or rented any real or personal property to any person with whom the conservator has a family or affiliate relationship as defined in Probate Code section 2359, subdivision (c)(2) and Probate Code section 2403, subdivision (c)(2).

Rule 7.860 amended and renumbered effective January 1, 2008; adopted as rules 12.15.8.1 and 12.15.8.3 effective May 19, 1998; previously amended January 1, 2002 and July 1, 2002.

7.870. Status report required

The conservator must submit a status report in all conservatorship matters of the person or person and estate at the time and in the form directed by the Court Investigator's Office.

Rule 7.870 amended and renumbered effective January 1, 2008; adopted as rule 12.15.8.4 effective May 19, 1998; previously amended January 1, 2002 and July 1, 2002.

7.880. Bond required

The court will not waive bond for an individual conservator of a conservatorship estate.

Rule 7.880 amended and renumbered effective January 1, 2008; adopted as rule 12.15.11.1 effective May 19, 1998.

7.895. Additional contents for petitions filed by private professional conservators

(a) Registration information required

Any petition to appoint a conservator filed by a private professional conservator must include his or her Alameda County and State of California registration numbers and the date he or she registered. No petition by a private professional conservator will be heard unless he or she is currently registered with both the county and the state. Proof of compliance with the statewide registry must be submitted to the Court Investigator's Office. Any private professional conservator must comply with all California state licensing requirements before he or she can be appointed in Alameda County.

(b) Disclosure of other proceedings required

The petitioner must disclose, by separate declaration, any proceedings, pending or concluded in Alameda County or any other jurisdiction, where orders have been issued or are sought to be issued which in any way affect the ward or conservatee that is the subject of the proceedings in Alameda County.

Rule 7.895 amended and renumbered effective January 1, 2008; adopted as rule 12.15.18 effective May 19, 1998.

APPENDIX C
CONSERVATORSHIP (PROBATE & LPS) AND GUARDIANSHIP FEE GUIDELINES FOR THE PUBLIC GUARDIAN, THE COUNTY COUNSEL, AND THE PUBLIC DEFENDER

No fee or charge shall be taken without a prior written order of the court setting forth the fee or charge.

No fee or charge may be anticipated nor property encumbered without a prior written order of the court setting forth the fee,

charge, and/or encumbrance.

When there is a difference, the provisions in the Appendix supersede the provisions in the main text of the local rules.

Size of estate	Fee guidelines
$499 and under	**-0-**
$500-$999	**10% of balance to Public Guardian** **8% of balance to County Counsel** **8% of balance to Public Defender**
$1,000-$9,999	**15% of balance, with a maximum of $900 to Public Guardian** **10% of balance, with a maximum of $700 to County Counsel** **10% of balance, with a maximum of $700 to Public Defender**
$10,000-$29,999	**9% of balance, with a maximum of $1,050 to Public Guardian** **7% of balance, with a maximum of $900 to County Counsel** **7% of balance, with a maximum of $900 to Public Defender**
$30,000-$49,999	**3.5% of balance, with a maximum of $1,250 to Public Guardian** **3% of balance, with a maximum of $1,000 to County Counsel** **3% of balance, with a maximum of $1,000 to Public Defender**
$50,000-$69,999	**2.5% of balance, with a maximum of $1,400 to Public Guardian** **2% of balance, with a maximum of $1,225 to County Counsel** **2% of balance, with a maximum of $1,225 to Public Defender**
$70,000-$84,999	**2% of balance, with a maximum of $1,615 to Public Guardian** **1.75% of balance, with a maximum of $1,445 to County Counsel** **1.75% of balance, with a maximum of $1,445 to Public Defender**
$85,000-$159,999	**1.9% of balance, with a maximum of $3,000 to Public Guardian** **1.7% of balance, with a maximum of $2,400 to County Counsel** **1.7% of balance, with a maximum of $2,400 to Public Defender**
$160,000 and above	**1.9% of balance, with a maximum of $4,000 to Public Guardian** **1.7% of balance, with a maximum of $3,000 to County Counsel** **1.7% of balance, with a maximum of $3,000 to Public Defender**

(a) Claims for case set up and investigation

In probate cases, there is a case set up and investigation claim of $1,200 by the Public Guardian and a case set up claim of $1,000 by County Counsel. These are requested at the time of the general plan and shall only be taken upon written court approval. The Public Defender may claim a case set up fee of $1,000.

(b) Claims for extraordinary compensation on sales of real property Additionally, there may be a claim by the Public Guardian of $1,000 and by the County Counsel of $850 on sales of real property. If the Public Guardian seeks an amount more than $1,000 then the entire amount must be supported by declarations providing detailed information as to the services rendered. The Public Guardian may claim $250 on sales of personal property over $1,000. These claims may be taken only upon written court approval.

(c) Estates with substantial non-liquid assets

For estates with substantial non-liquid assets, Public Guardian, County Counsel, and Public Defender fees will be reserved until such time as the assets are liquidated or until the conservatee is deceased, whichever is sooner.

(d) Claims for extraordinary legal services

For cases requiring extraordinary legal services, the County Counsel and the Public Defender may submit itemized billings with the accounts, in declaration form, for fees in excess of the schedule amounts.

(e) Miscellaneous fee provisions

(1) In the final accounts where the conservatees or the wards are deceased, the fee waiver provision is not applicable. The Public Guardian, County Counsel, and Public Defender will claim 40%, 30%, and 30% respectively of the estate balance up to $3,000.

(2) In cases where the Public Defender is not appointed, the Public Guardian and County Counsel will claim 55% and 45% respectively of the estate balance up to $2,200.

(3) On estates with balances on hand of $50,000 and over, the Public Guardian, County Counsel and Public Defender will claim fees pursuant to the schedule.

(4) In cases where the Public Guardian and County Counsel have followed the Probate Code section 2631 procedure to liquidate the decedent's estate and pay debts, additional fees of $500 to the Public Guardian and $300 to the County Counsel will be claimed. Fees claimed will be taken only upon written court approval.

Appendix C reenacted and renumbered effective July 1, 2008; adopted as Attachment C to Chapter 12 of the Local Rules effective July 1, 1999; previously amended January 1, 2004.

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Alpine County
Rules of Court

Effective January 1, 2008

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

CHAPTER 1
GENERAL COURT RULES

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CHAPTER 1
GENERAL COURT RULES

RULE 1. Construction of Rules; Failure to Comply

1.1. Citation of Rules

These rules shall be known and cited as the Alpine County Superior Court Local Rules; they are supplementary and subject to any and all rules adopted by the Judicial Council and statutes of this state. (Adopted January 1, 2007)

1.2. Construction of Rules

These rules shall be liberally construed to promote the orderly and efficient administration of justice. Unless otherwise dictated by context, definitions of terms found in the California Rules of Court shall control construction of terms in these rules. Hereinafter CRC refers to the California Rules of Court. (Adopted January 1, 2007)

1.3. References to Court

All references to "the court" or "this court" are to the Alpine County Superior Court. (Adopted January 1, 2007)

1.4. Failure to Comply

Failure to comply with any of these rules may result in the imposition of sanctions pursuant to CRC Rule 2.30, Code of Civil Procedure sections 177.5 and/or 575.2. (Adopted January 1, 2007, Revised January 1, 2008)

CHAPTER 2
FAIRNESS AND ACCESS RULES

RULE 2. Fairness, Access, Facilities and Other Considerations for Persons with Disabilities

2.1. Fairness

To maintain integrity and impartiality of the judicial system the court will:

(a) Insure that all proceedings are conducted so as to be fair and impartial to all participants.

(b) Insure that all persons in and about the courtroom refrain from engaging in conduct that exhibits racial, gender, national origin, religious, or other forms of bias directed toward counsel, court personnel, witnesses, parties, jurors, or any other person or group.

(c) Insure that all orders, rulings, or decisions are based on an objective balancing of competing rights and interests in consideration of applicable law, through the exercise of sound judgment and judicial discretion, without influence of race, gender, national origin, religion, or other form of bias.

(Adopted January 1, 2007)

2.2. Access

The courthouse is a historic building lacking in access and facilities to accommodate all persons with disabilities. Upon notice and request to accommodate a person with disability implicating access and/or facilities, sessions of the court will be moved to a suitable alternate location. Upon notice and request to accommodate persons with other disabilities, the court will provide such assistance or arrangement as may be appropriate. Any request for accommodation may be made by submitting to the court Judicial Council Form MC-410, or by telephone to the Court Executive Officer. (Adopted January 1, 2007)

2.3. References to Counsel/Attorney

All references to attorney or counsel shall also refer to self-represented persons and these rules shall apply equally to such persons. (Adopted January 1, 2007)

CHAPTER 3
OPERATIONAL RULES

RULE 3. General Matters Concerning Court Operation

3.1. Regular Sessions of the Court, Calendars, and Assignment of Judges

Regular sessions of the court are held Mondays and Tuesdays unless falling on an authorized court holiday, in which event the session will be held the next working day. Calendars will generally be as follows:

Monday Calendar	Department 1: Judge Richard K. Specchio
9:00 AM	**Traffic Arraignments** **Court Trials** **Trial DeNovo**
10:00 AM	**All Criminal Arraignments** **Misdemeanor and Felony Proceedings (Including pre-trial, pre-preliminary hearings, Preliminary Hearings, Motions)**
3:00 PM	**Juvenile Dependency (WIC 300)** **Child Support**
	Department 2: Judge David L. DeVore
1:00 PM	**Fish and Game Arraignments**

	Misdemeanor and Felony Proceedings (Including pre-trial, pre-preliminary hearings, Preliminary Hearings, Motions)
2:00 PM	**Juvenile Delinquency (WIC 602)** **Probate**
Tuesday Calendar	Departments 1 and 2
9:00 AM	**Civil Limited, Civil Unlimited** **Unlawful Detainer** **Small Claims**

(Adopted January 1, 2007, Revised January 1, 2008)

3.2. [Repealed 2008]

3.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to deviation from regular scheduling for convenience.

3.3. Long-Cause Matters—Special Setting

Long-cause matters are those which are reasonably anticipated to consume more than ½ hour of hearing time and/or involve witness testimony. In any civil or criminal matter each party shall determine if a matter is reasonably to be long-cause, and if so shall so advise all other parties and seek a special setting from the clerk. (Adopted January 1, 2007)

3.4. Assignment of Judges—Code of Civil Procedure 170.6

For purposes of Code of Civil Procedure 170.6 challenges, the assignment of judges of this court is as follows: All Department 1 cases are assigned to Judge Richard K. Specchio for all purposes. All Department 2 cases are assigned to Judge David L. DeVore for all purposes. Notwithstanding the assignment of a judge of this court to family law matters, such matters may be assigned to a Commissioner regularly engaged in the El Dorado Superior Court, South Lake Tahoe Session, pursuant to collaborative agreement between the two courts, and hearings will generally occur in that court. (Adopted January 1, 2007)

3.5. Ex Parte Applications

The court does not reserve a specific day or time for hearing of ex parte applications and such matters may be set by contacting the Clerk's office. At a minimum, notice shall be given as provided by the California Rules of Court and any applicable statute. This local rule does not apply to ex parte applications for domestic violence or civil harassment restraining orders, elder or dependent adult protective orders, applications in criminal proceedings for the confidential appointment of experts or investigators, or as otherwise provided by law. (Adopted January 1, 2007)

3.6. Jury Trial Sessions, Location, and Juror Availability

Jury trials are regularly scheduled for a one week period each quarter of the year, the schedule of which for the following year will be available in the clerk's office on or about each October 1. Time requirements in criminal matters and other extraordinary circumstances may result in alternate scheduling, and/or in scheduling of two weeks in any given quarter. Jurors in the Bear Valley area are exempt from jury service during the winter months due to closure of Highway 4. The court endeavors to minimize juror inconvenience and to achieve the "one day/one trial" goals of CRC 2.1002, however Alpine County's small and widely scattered population of available jurors present unusual circumstances and difficulties in strictly complying with that Rule. As a rule jurors are not summoned for more than one trial period each year, are not asked to serve on more than one trial, are not held on call for more than one day, and are not placed on telephone standby for more than five court days. (Adopted January 1, 2007, Revised January 1, 2008)

3.7. Court Reporters

Generally, the court provides a court reporter in all criminal matters except infractions, juvenile proceedings under Welfare and Institutions Code sections 300 and 602, and all other matters where required by statute. In the event a reporter is unavailable (as by inclement weather, road closure, etc), upon consent of parties effort will be made to tape record proceedings and copies of such recordings and/or transcripts will be available upon request by persons who would be entitled to obtain an official transcript, upon payment of reasonable costs thereof (This is done as an accommodation only and will not constitute an official record). Any party desiring a court reporter in other matters, including civil law and motion and family law proceedings, shall arrange for the attendance and bear the cost of such reporter. The clerk's office will provide a list of reporters working in the region. (Adopted January 1, 2007)

3.8. Facsimile Filings and Service

3.8.1. Facsimile filing and service of documents shall comply with CRC 2.300 et seq, and these rules. Facsimile filings exceeding twenty (20) pages, inclusive of attachments; transmissions not received in their entirety by 4:00 PM will be filed the following day. It is the responsibility of the party so filing to insure that time-sensitive filings have been entirely received so as to have been filed on a given day. (Adopted January 1, 2007, Revised January 1, 2008)

3.8.2. [Repealed 2008] Rule 3.8.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the filing of the original of any document filed by facsimile.)

CHAPTER 4
COURTROOM DECORUM

RULE 4. Courtroom Decorum

4.1. Attire

Attorneys shall be dressed in neat and appropriate business attire for all court appearances, and litigants, witnesses, and other persons attending court sessions shall dress in a manner that is neither offensive nor distracting to others of normal sensibilities. Allowance will be made for inclement weather which makes sensible the wearing of foul weather clothing. (Adopted January 1, 2007)

4.2. Talking in the Courtroom

Talking among persons in the courtroom during sessions is distracting and should be avoided; talking to clerks, among attorneys, between attorneys and clients, shall be minimized and, when necessary, occur so as to avoid disruption of or distraction to the proceedings. Counsel should avoid conversing with clients when the client is being addressed by the court. No person other than involved attorneys and court personnel shall communicate with a prisoner without leave of the court. (Adopted January 1, 2007)

4.3. Use of the Courtroom and Courthouse

4.3.1. It is the general policy of the court to permit attorneys and self-represented persons wide latitude in the use of the courtroom, including the well area between counsel tables and the bench. However, to minimize the potential for distraction and alleviate undue concern for security, persons desiring to move away from counsel table are encouraged to seek prior approval of the court to do so and to utilize the bailiff to transmit documents or objects to the court or the clerk. In prolonged proceedings blanket approval for free movement about the courtroom, including approach to witnesses may be may be sought by counsel. (Adopted January 1, 2007)

4.3.2. Rule 4.3.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to firearms in the courtroom.

4.3.3. Rule 4.3.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to Attorneys directing the witnesses to the clerk for administration of an oath.

4.3.4. No attorney, self-represented person or witness in a proceeding shall approach or communicate with prospective or impaneled jurors, including alternates, touching on any subject of the pending matter or their potential or actual service as jurors, nor engage them in any conversation. (Adopted January 1, 2007, Revised January 1, 2008)

4.4. Reacting to Proceedings

Persons in the courtroom shall not physically or audibly react with approval, disapproval, agreement, disagreement, pleasure, displeasure, or any other visible emotional display, to any testimony, statement of counsel, witnesses, or court personnel, or ruling of the court. (Adopted January 1, 2007)

CHAPTER 5
CIVIL CASE RULES

RULE 5. Civil Case Management

5.1. Scope

This Rule applies to those matters and in the manner set forth in CRC 3.712 unless otherwise specified. (Adopted January 1, 2007)

5.2. Differential Case Management Generally

5.2.1. The court endeavors to achieve the disposition time goals set forth in CRC 3.714. Generally, cases will be evaluated and given a designation as a Limited, Unlimited, or Exempt Exceptional case not later than the Initial Case Management Conference. Any party desiring a particular designation may file a Differential Case Management Request for Designation or Exemption setting forth the reasons for the request in consideration of the factors set forth in CRC 3.715 and/or 3.400 before or with the Initial Case Management Conference Statement or at such other time as circumstances may warrant. (Adopted January 1, 2007, Revised January 1, 2008)

5.2.2. Rule 5.2.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to designating a case as Expedited.

5.3. Service of Pleadings

5.3.1. When returning conformed copies of a complaint, or cross-complaint which names new parties, the clerk will also provide Notice of Initial Case Management Conference and blank Case Management Statement, both of which shall be served with the Summons and Complaint/Cross-Complaint. (Adopted January 1, 2007)

5.3.2. Within sixty (60) days of the filing of a complaint or a cross-complaint which names new parties, service of the action on adverse parties must be effected and proof of service filed with the court. The filing of an amended complaint pursuant to CCP 472 will begin anew the time for service. (Adopted January 1, 2007)

5.4. Failure to File Responsive Pleadings, Extension of Time to Respond; Default and Default Judgment

5.4.1. Unless an extension of time to respond is granted by the serving party as provided below, whenever any party served fails to respond within the time required by law the serving party shall, within 15 days thereafter, request entry of default, upon receipt of which the court will set a default hearing. In appropriate cases, declarations under CCP 585 may serve in lieu of personal appearance. In multi-defendant cases which are proceeding as to one or more parties, upon application and order of the court default hearings and judgments as to other parties who have not appeared need not be pursued until the entire matter is concluded. (Adopted January 1, 2007)

5.4.2. Any party serving pleadings may grant to the party served one extension of time to respond, for a period not to exceed thirty (30) days without leave of court. The party granting an extension forthwith shall advise the court in writing of the grant and the due date for response. (Adopted January 1, 2007)

5.4.3. Stipulations seeking to set aside a default shall include a proposed order which includes a directive that the responding party shall have fifteen (15) court days after the date the order is signed to respond. (Adopted January 1, 2007)

5.5. Amendment of Pleadings

Motions to amend pleadings shall include a proposed order and proposed amended pleading designated as such for separate lodging with the Clerk. (Adopted January 1, 2007)

5.6. Case Management Conferences

5.6.1. Case Management Conferences will be conducted pursuant to CRC 3.727. (Adopted January 1, 2007, Revised January 1, 2008)

5.6.2. An Initial Case Management Conference will be set within approximately 150 days of the filing of an action, for a date set by the Clerk and given in the Notice of Initial Case Management Conference (except in the event a matter is designated as Expedited). Subsequent Conferences are subject to setting at any time in the discretion of the court. (Adopted January 1, 2007)

5.6.3. Case Management Statements shall be filed by all parties at least 5 days before a Conference, and in the event of multiple Conferences, shall accurately reflect all changes of circumstance since the last one. Pro forma Statements, preparation for and/or participation in Conferences are disfavored. (Adopted January 1, 2007)

5.6.4. Appearance by telephone for Case Management Conferences is permitted upon compliance with CRC 3.670, unless ordered otherwise by the court. In multiple party matters, the clerk shall designate the party responsible for linking all parties appearing by telephone. (Adopted January 1, 2007, Revised January 1, 2008)

5.6.5. Short cause matters, as defined in CRC 3.735, may be exempted from Case Management Conference requirements upon order of the court and shall be subject to the provisions of that Rule. (Adopted January 1, 2007, Revised January 1, 2008)

5.7. Law and Motion; Proposed Orders

5.7.1. All motions shall include, in the Notice of Motion, an estimate of the amount of time the hearing will entail. Matters which will take 20 minutes or less may be set on any regular afternoon calendar, but will trail criminal and juvenile and all other matters previously set. Matters estimated to require more than 20 minutes will be specially set upon consultation with the Clerk before the motion is filed. The court does not regularly, but may, issue tentative decisions. Appearance by telephone for law and motion matters is permitted upon compliance with CRC 3.670, unless ordered otherwise by the court. (Adopted January 1, 2007, Revised January 1, 2008)

5.7.2. All motions and opposition to motions shall be accompanied by a proposed form of order. In the case of motion for summary judgment/adjudication, a proposed order for the denial of the motion shall specify the factual issues believed by the opposing party to be necessary for determination by a jury. (Adopted January 1, 2007)

5.8. Setting Cases for Trial

Trials may be set upon the filing by any party of a Request for Trial Setting, to which other parties may respond within 10 court days, or at a Case Management Conference. Any such Request/Response shall estimate the number of days the matter reasonably is expected to take until the matter is submitted for decision. The Request shall indicate whether a jury or court trial is sought and shall include a statement that the proposed date has been confirmed by the Clerk to be available. (Adopted January 1, 2007, Revised January 1, 2008)

5.9. Settlement Conferences

5.9.1. Except in short cause matters, approximately thirty (30) days before trial a mandatory settlement conference will be held. A settlement conference statement shall be filed pursuant to CRC 3.1380 and shall advise all offers and counteroffers exchanged (pursuant to CCP 998 or otherwise) previously. Any party may submit a Confidential Addendum to the statement which will not be lodged in the file as a public document but will be kept under seal for use only by the settlement conference judge and not subject to inspection except upon order of the court. (Adopted January 1, 2007, Revised January 1, 2008)

5.9.2. Each party appearing in the action must personally appear at the settlement conference, or, upon application and order of the court, be immediately available and subject to reach at all times until the conference is concluded or the party excused by the judge presiding. Corporate and public entity parties shall be represented by a responsible employee who is authorized to make decisions without limit, subject only to approval of a governing board which has ultimate authority to make such decisions, and representatives of insurance companies providing coverage to parties shall have settlement authority to the limits of the coverage. (Adopted January 1, 2007)

5.10. Jury Trial: Pretrial Management Conference, Motions in Limine

5.10.1. In the case of all jury trials, within approximately two weeks preceding the trial date there will be a Pretrial Management Conference which will include hearing on motions in limine. Motions in limine and responses shall be filed, respectively, at least ten days and three days before the conference. At least 10 days before the conference there shall be filed a Pretrial Management Conference Statement which includes the following: (1) Proposed statement of the case to be read to the jury; joint statements are encouraged. (2) Witnesses list, including estimated length of each witness's appearance and the anticipated order of witnesses. (3) Exhibit list with proposed numbering. (4) Succinct statement of the submitting party's factual and legal contentions, and points and authorities on anticipated evidentiary and/or substantive issues. (5) Agreed and proposed stipulations. (6) Proposed jury instructions and verdict forms. Counsel will be expected to have discussed both and in the conference statement shall identify the instructions to which there is agreement and those which are disputed. In each case where special verdicts or findings of the jury will be required, the party or parties who have requested jury shall present the form of any special verdicts or interrogatories which will be required for the resolution of the matter by the jury, and all other parties may present proposed alternatives thereto. (7) Any other matter thought to be helpful the orderly progress of the trial, or, alternatively, thought to be a potential impediment to the orderly progress of the trial. (Adopted January 1, 2007)

5.10.2. The Pretrial Management Conference Statement may serve as a trial brief, unless the court orders otherwise. The conference shall be attended by all attorneys serving as chief trial counsel, who shall be thoroughly familiar with and prepared to discuss all aspects of the case, and whose appearance on behalf of associated counsel shall be binding on all. (Adopted January 1, 2007)

5.10.3. Motions in limine shall be filed so as to be heard at or before the Pretrial Management Conference. (Adopted January 1, 2007, Revised January 1, 2008)

5.10.4. Any party who has requested a jury trial or has requested a jury trial wherein the jury will be requested to render an advisory verdict, or in any matter in which special interrogatories, findings, or verdicts will be required of the jury, shall present

the proposed form of any such interrogatories, findings, or verdicts at the Pretrial Management Conference. (Adopted January 1, 2007, Revised January 1, 2008)

5.10.5. Initial jury fees shall be deposited with the Clerk no later than the Pretrial Management Conference, and subsequent day's fees paid at the outset of the second and successive days of jury trial in a sum sufficient to satisfy that day's fees and mileage. The failure to meet this obligation shall be construed as a waiver of jury, and if such a waiver is declared by the court the other parties shall have an opportunity to maintain the jury by assuming the continuing financial obligation. (Adopted January 1, 2007)

5.10.6. Counsel shall insure that the prospective jury pool and jury selected are not contaminated by contact with counsel, defendants, or witnesses when in or about the courthouse or otherwise. (Adopted January 1, 2007)

5.11. Working Copies of Motion Pleadings, Pretrial Management Conference Statements, Trial Briefs

Any motion pleading, points and authorities, Pretrial Management Conference Statement, or trial brief consisting of eight or more pages, inclusive of attachments, when filed shall be accompanied by an additional copy conspicuously marked "Working Copy". (Adopted January 1, 2007)

5.12. Scheduling Calendar Dates

5.12 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to scheduling of calendar dates.

CHAPTER 6
CRIMINAL CASE RULES

RULE 6. Criminal Case Management

6.1. Disposition Goals.

The court endeavors to achieve criminal case disposition consistent with Standard 2.1 of the Standards of Judicial Administration (Appendix to California Rules of Court) as follows:

(1) Misdemeanor Cases: (a) 90 percent concluded within 30 days after arraignment. (b) 98 percent concluded within 90 days after arraignment. (c) 100 percent concluded within 120 days after arraignment.

(2) Felony Preliminary Examinations: (a) 90 percent concluded within 30 days after arraignment. (b) 98 percent concluded within 45 days after arraignment. (c) 100 percent concluded within 90 days after arraignment. (3) Felony Trials: 100 percent concluded by the second trial period following arraignment on information (see Rule 3.6).

(Adopted January 1, 2007, Revised January 1, 2008)

6.2. Filing of Accusatory Pleadings and Requests for Warrants

6.2.1. The filing of accusatory pleadings shall include an original and one copy for each defendant. (Adopted January 1, 2007, Revised January 1, 2008)

6.2.2. Rule 6.2.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to accusatory pleadings involving persons in custody.

6.2.3. Rule 6.2.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to accusatory pleadings involving persons not in custody.

6.2.4. Oral amendments and interlineations to accusatory pleadings once filed are disfavored. (Adopted January 1, 2007, Revised January 1, 2008)

6.2.5. When setting bail on an arrest warrant the court will utilize the Alpine County and Uniform Bail Schedules, unless the request for the warrant includes a specific request and showing of good cause for a different bail. (Adopted January 1, 2007, Revised January 1, 2008)

6.3. Hearings in Criminal Cases

Hearings/conferences in criminal cases are principally

(1) Arraignment

(2) Bail Review

(3) Demurrer

(4) Deferred arraignment/pretrial (misdemeanor and infraction only)

(5) Pre-trial Conference

(6) Pre-preliminary Examination Conference

(7) Deferred Entry of Judgment/Diversion/ Proposition 36

(8) Motions

(9) Trial Readiness and Management

(10) Preliminary Examination.

(11) Trial

(12) Judgment and Sentence/Probation (including restitution)

(13) Order to Show Cause re Probation Violation/Other

(14) Review/Modification

(15) Public Defender Repayment

(Adopted January 1, 2007, Revised January 1, 2008)

6.4. Arraignment, Bail and Bail Review

6.4.1. Except as otherwise provide herein, arraignment shall be completed and plea entered on the first day scheduled, whether such proceeding is on complaint or information. (Adopted January 1, 2007)

6.4.2. At the time of arraignment the District Attorney shall have determined preliminarily the eligibility of defendants for Deferred Entry of Judgment pursuant to Penal Code section 1000, diversion program pursuant to Penal Code section 1000.1, et seq, drug treatment pursuant to Penal Code section 1210-1210.1 (Prop. 36), and, if applicable, shall file a written statement of the defendant's status under such sections. (Adopted January 1, 2007)

6.4.3. Persons appearing without counsel shall file a Statement of Rights upon the calling of the matter. Such persons who desire to consult with and/or retain counsel before concluding arraignment shall, upon request and time waiver, be granted a reasonable continuance of arraignment for such purpose, not to exceed two weeks. (Adopted January 1, 2007)

6.4.4. Rule 6.4.4 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the responsibilities of counsel appearing at arraignment.

6.4.5. Pleas of not guilty entered at arraignment will be deemed to include reservation of right to demur or to make motions. Demurrers shall be filed so as to be heard not later than the third week following the first appearance. (Adopted January 1, 2007, Revised January 1, 2008)

6.4.6. Rule 6.4.6 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to rules of Counsel appearing at an arraignment.

6.4.7. Unless defendant's appearance is required by law or otherwise ordered by the court, counsel may defer arraignment and request a deferred arraignment/pre-trial conference on misdemeanors and infractions by letter, including FAX, received at least one court day prior to the hearing and demonstrating proof of service on the District Attorney. Such requests shall be construed as a binding commitment by counsel to representation of the defendant. Such requests shall be on letterhead stationary of the attorney and shall contain all of the following:

(1) Statement of representation.

(2) Defendant's true name.

(3) Date of scheduled arraignment.

(4) Statement that counsel has advised defendant of the charges, possible pleas and defenses, potential direct consequences of conviction, and his/her constitutional and statutory rights, including those relevant to time limits.

(5) Request for deferred arraignment to pre-trial conference and general waiver of time for all future proceedings, including trial.

(6) Requested date for deferred arraignment/pre-trial conference consistent with Rule 6.1.

(7) If not previously occurring, that arrangement for the defendant's booking has been made with the Alpine County Sheriff. Counsel shall advise the court of the defendant's booking status at the next hearing.

(8) If defendant is free on bail bond, acknowledgment by defendant that such bond shall continue in full force and effect.

(Adopted January 1, 2007, Revised January 1, 2008)

6.4.8. Rule 6.4.8 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to scheduling after the arraignment.

6.4.9. Rule 6.4.9 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to deviations from the Bail Schedule.

6.5 Discovery and Investigation

6.5.1. Discovery is reciprocal and governed by Penal Code sections 1054-1054.7, and, to the extent not prohibited by or inconsistent with such sections, this Rule. (Adopted January 1, 2007)

6.5.2. Informal requests for discovery are deemed to occur at arraignment. (Adopted January 1, 2007)

6.5.3. Rule 6.5.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the discovery duties of the District Attorney.

6.5.4. Upon receiving discovery the defense forthwith shall identify and initiate such investigation, including independent acquisition of prior conviction records, interview of witnesses, retainer of experts, and chemical/scientific testing as is necessary and appropriate to case evaluation and as will permit meaningful pre-trial and/or pre-preliminary examination conference and timely preliminary examination and/or trial. (Adopted January 1, 2007)

6.5.5. Rule 6.5.5 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to requests for discovery.

6.6. Pre-trial and Pre-preliminary Examination Conferences

6.6.1. Pre-trial and pre-preliminary examination conferences shall be scheduled for the purpose of determining if a given matter may be subject to disposition by agreement of the parties and acceptance by the court prior to preliminary examination and/or trial. (Adopted January 1, 2007)

6.6.2. All persons appearing at any pre-trial or pre-preliminary examination conference shall be fully prepared to accomplish its purposes; discovery, investigation, negotiation, and consideration of disposition shall have been conducted sufficiently in advance to permit proceedings to be meaningful and efficient. Multiple pre-trial or pre-preliminary examination conferences are disfavored. (Adopted January 1, 2007)

6.6.3. Rule 6.6.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to negotiations for disposition.

6.6.4. Rule 6.6.4 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the appearance of defendants at the pre-trial conferences.

6.6.5. Rule 6.6.5 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to conferring with a judge in chambers for felony cases.

6.6.6. Rule 6.6.6 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to pre-trial dispositions.

6.7. Dispositive Pleas

6.7.1. Notwithstanding the limitations of Penal Code sections 1192.5 and 1192.6 to felony offenses, the provisions of those sections shall apply also when a defendant enters a plea of guilty or no contest to any misdemeanor offense involving use of a weapon, the infliction of any injury, domestic violence, and/or aggravating facts subjecting the defendant to increased penalties (e.g. prior conviction).

(1) In all cases coming under this Rule in which a plea is conditioned upon the court's acceptance of a limitation on the punishment to be imposed the Defendant shall state on the record the terms of the conditional plea, and the District Attorney shall state approval thereof on the record.

(2) In all cases coming under this Rule in which charges contained in the original accusatory pleading are to be amended or dismissed, the District Attorney shall state the reasons for the amendment or dismissal on the record.

(3) In all cases coming under this Rule in which the District Attorney seeks dismissal of a charge in a complaint, information, or indictment the District Attorney shall state the specific reasons for the dismissal on the record.

(4) In all cases coming under this Rule in which the District Attorney recommends what punishment the court should impose or how it should exercise any of the powers legally available to it, the District Attorney shall state such recommendation on the record.

(Adopted January 1, 2007, Revised January 1, 2008)

6.7.2 In any case in which plea bargaining is presumptively prohibited by Penal Code section 1192.7 and a plea bargain is proposed to the court, the District Attorney shall state on the record the reasons it is believed the case is exempt from the prohibition. (Adopted January 1, 2007, Revised January 1, 2008)

6.7.3. Pleas to all felonies and to misdemeanors offenses that subsequently may be charged as priors shall be accomplished by the contemporaneous filing of a fully executed relevant change of plea form. Counsel shall explain the entirety of the form to defendants and defendants shall be prepared to respond to inquiries from the court about the contents of the form and the intended plea. (Adopted January 1, 2007)

6.7.4. Pleas to offenses, whether charged and/or the subject of felony or misdemeanor plea, with special sentence consequences (e.g., drug or domestic violence programs, registration as drug or sex offender) shall be accomplished by the contemporaneous filing of a fully executed relevant change of plea form. Counsel shall explain the entirety of the form to defendants and defendants shall be prepared to respond to inquiries about the contents of the form and the intended plea. (Adopted January 1, 2007)

6.7.5. Rule 6.7.5 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to pleas entered by counsel.

6.7.6. Pleas of no contest and/or pursuant to People v. West, 3 Cal.3d 595, are permitted only if accompanied by a statement of factual basis or reference to and submission of specific documentary evidence supporting the plea, consistent with People v. Holmes, 32 Cal.4th 432, and People v Willard, 154 Cal.App.4th 1329. (Adopted January 1, 2007, Revised January 1, 2008)

6.7.7. Pleas with waivers pursuant to People v. Harvey, 25 Cal.3d 754, are permitted only if accompanied by a statement on the record identifying the dismissed counts or charges to which such waiver does and does not apply. (Adopted January 1, 2007, Revised January 1, 2008)

6.8. Criminal Trials

6.8.1. Within 14 days prior to a scheduled trial a Trial Readiness and Management Conference will be held which will include preliminary consideration of all motions in limine, proposed voir dire, proposed jury instructions and verdict form, and trial management issues. All parties shall file with the court and serve on all other parties 10 days prior to that conference a Trial Readiness and Management Conference Statement including the material mentioned next above, list of anticipated witnesses each expects to call, time estimate of the party's case in chief (including anticipated cross-examination), and list and copy of all exhibits. Counsel shall be familiar with the provisions of sections 8.5 and 8.9 of the Standards of Judicial Administration in connection with voir dire. (Adopted January 1, 2007, Revised January 1, 2008)

6.8.2. Rule 6.8.2 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to scheduling of criminal trials.

6.8.3. Multiple cases set for the same trial period generally will proceed in the following order: cases in which no time waiver has been given ahead of all others, in-custody defendants ahead of others, felonies ahead of misdemeanors, and then to cases based on

earliest filing date. The court will endeavor to establish an order in which cases will proceed at least one week prior to the first day of the trial period. (Adopted January 1, 2007, Revised January 1, 2008)

6.8.4. If multiple cases are set for the same trial period, any not immediately proceeding will be ordered to trail day-to-day. All parties shall monitor the progress of cases in trial and be prepared to proceed on one-half day notice. Trailing cases are subject to being advanced and/or the order of trailing changed in the event of disposition of earlier set cases, or upon order of the court. (Adopted January 1, 2007)

6.8.5. Unless the court orders otherwise, on the first day of a scheduled trial counsel and defendants shall appear at 8:15 a.m. (Adopted January 1, 2007)

6.8.6. Counsel shall have made sufficient arrangements for the appearance of witnesses that progress of trial is not delayed. (Adopted January 1, 2007)

6.8.7. Counsel shall insure that the prospective jury pool and jury selected are not contaminated by contact with counsel, defendants, or witnesses when in or about the courthouse or otherwise. (Adopted January 1, 2007)

6.8.8. All pre-trial motions, other than motions in limine, shall be filed and set for hearing at least one week prior to the Trial Readiness and Management Conference. (Adopted January 1, 2007)

6.9 Continuances; Special Appearances

6.9.1. Continuances frustrate the disposition goals and orderly processes of the court and are disfavored. However, in consideration of the court's remote location, it is the policy of the court reasonably to accommodate unavoidable conflicting commitments of counsel and defendants. Scheduling of continued matters shall be consistent with the regular calendars of the court. Routine requests to move matters from one calendar to another are disfavored. Conflicts arising after the scheduling of a given matter generally shall not constitute good cause. (Adopted January 1, 2007, Revised January 1, 2008)

6.9.2. Motions to continue which fail to comply with Penal Code section 1050 and particular applicable statutes and California Rules of Court, are disfavored. A stipulation alone will not constitute grounds for any continuance, should not be relied upon without court order, but may be presented as part of a motion. (Adopted January 1, 2007, Revised January 1, 2008)

6.9.3. Rule 6.9.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to special appearances by one attorney for another in criminal matters.

6.10 Judgment & Sentencing/Probation

6.10.1. Judgment & Sentence/Probation shall follow promptly entry of plea or verdict of guilty; immediate sentencing may occur in the absence of probation report upon stipulation of the parties, waiver of time by the defendant, and approval by the court. Unless otherwise ordered by the court, Judgment & Sentencing/Probation hearings requiring probation reports or pursuant to time waiver by defendant shall be held not later than the fourth week following plea or verdict. (Adopted January 1, 2007)

6.10.2. Judgment & Sentence/Probation Orders for time in county jail are satisfied by custody in El Dorado County (Placerville or South Lake Tahoe) pursuant to cooperative agreement with Alpine County. Delayed surrender shall be permitted only upon a showing of good cause and when accompanied by the defendant's acknowledgment of the principles of and waiver pursuant to People v. Cruz, 44 Cal.3d 1247, and People v. Masloski, 25 Cal.4th 1212. Requests for weekend time in custody shall be accompanied by specific dates, time, and place of self-surrender and be accompanied by similar Cruz/Masolski acknowledgment and waiver. (Adopted January 1, 2007, Revised January 1, 2008)

6.10.3. Rule 6.10.3 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the Sheriff's Work and Community Service programs.

6.10.4. Rule 6.10.4 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to out-patient or in-patient counseling.

6.10.5. Rule 6.10.5 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to sentencing in the defendant's absence.

6.10.6. Rule 6.10.6 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to summary reports given to the Court by the Probation Officer.

6.10.7. Rule 6.10.7 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to judgments of imprisonment.

6.10.8. Rule 6.10.8 repealed effective January 1, 2008; adopted effective January 1, 2007. The repealed rule related to the defendant's actual days already in custody.

6.11. Working Copies of Motion Pleadings, Pretrial Management Conference Statements, Trial Briefs

Any pleading consisting of eight or more pages, inclusive of attachments, when filed shall be accompanied by an additional copy conspicuously marked "Working Copy". (Adopted January 1, 2007)

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Source: Estate Planning/California Local Probate Rules/Amador County Probate Rules

Amador County
Probate Rules

Effective January 1, 2010

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CHAPTER 1
GENERAL RULES

1.00 SCOPE OF RULES

These Local Rules of Court apply to the Amador County Superior Court.

(Effective 1/1/95; Amended 1/1/00)

1.01 CITATION OF RULES

These Rules shall be known and cited as the "Local Rules for the Amador County Superior Court."

(Effective 1/1/95; Amended 1/1/00)

1.02 EFFECTIVE DATE OF RULES

These Rules shall take effect January 1, 2009.

(Effective 1/1/95; Amended 7/1/01; Amended 1/1/03; Amended 7/1/07; Amended 1/1/08; Amended 7/1/08; Amended 1/1/09)

1.03 EFFECT OF RULES

These rules shall on their effective date supersede all local court rules previously adopted by the Amador County Superior Court.

(Effective 1/1/95; Amended 1/1/00)

1.04 CONSTRUCTION AND APPLICATION OF RULES

These Rules shall be construed and applied in such a manner as to not conflict with the California Rules of Court and shall be liberally construed to facilitate and promote the business and administration of justice by the Amador County Superior Court.

(Effective 1/1/95; Amended 1/1/00)

1.05 ADOPTION OF CALIFORNIA RULES OF COURT

The court hereby adopts the California Rules of Court, which are applicable to superior courts in civil and criminal cases, and the Uniform Local Rules for Third Appellate District Superior Courts.

(Effective 1/1/95; Amended 1/1/00)

1.06 AMENDMENT, ADDITION, OR REPEAL OF THESE RULES SANCTIONS FOR FAILURE TO COMPLY WITH RULES

A. These Local Rules may be adopted, amended, or repealed by the judges of the court at any judges meeting. Any rules adopted or amended shall be effective subject to the notice and publication requirements of Code of Civil Procedure §575.1 and the requirements of Government Code §68071.

B. These Rules, where applicable to civil actions and proceedings and as amended from time to time, are adopted pursuant to Code of Civil Procedure §575.1. Any counsel, party represented by counsel, or party appearing in pro per, who fails to comply with any of the requirements set forth in these Rules, shall upon motion of a party or the court be subject to the sanctions set forth in Code of Civil Procedure §575.2, Code of Civil Procedure §177.5 and California Rules of Court, Rule 2.30.

(Effective 1/1/95; Amended 1/1/00; Amended 1/1/07)

1.07 RULES GOVERNING PROBATE FILINGS

The civil law and motion rules contained herein shall be applicable to the filing of documents in probate proceedings except where otherwise provided by statute.

(Effective 1/1/97)

CHAPTER 2
JUDICIAL ADMINISTRATION

2.00 PRESIDING JUDGE

The presiding judge of the Amador County Superior Court shall be selected by agreement of the judges and shall serve a two-year term, which shall commence on January 1 of each even-numbered year and expire on December 31 of each odd-numbered year. If the presiding judge is absent or unable to act, then the other judge will act as presiding judge.

(Effective 1/1/95; Amended 7/1/01)

CHAPTER 3
COURT EXECUTIVE OFFICER

3.00 CLERK OF THE SUPERIOR COURT—COURT EXECUTIVE OFFICER

A. There shall be appointed a Court Executive Officer for the Superior Court of Amador County who shall be selected by agreement of the Superior Court Judges and shall serve at the pleasure of said judges.

B. Under the direction of the Presiding Judge, the Court Executive Officer shall perform the duties described in Rule 6.610 of the Standards of Judicial Administration as adopted by the Judicial Council and any other duties as may be assigned by the Presiding Judge.

C. The powers, duties and responsibilities transferred pursuant to this rule shall include all of the powers, duties and responsibilities of the County Clerk with respect to the Superior Court, in all actions, proceedings and records including, but not limited to the receipt, processing and filing of papers concerning court business and records; the maintenance of court files; indices and other records; the provision of courtroom and other clerks to assist in the conduct and recording of judicial business; the calendaring of cases and the maintenance of court calendars and schedules, and the keeping and dissemination of statistical information and reports as required by law or policy. The Court Executive Officer shall also serve as the Jury Commissioner.

D. It is the intent of this rule that all employee positions and incumbent personnel performing said functions are reallocated accordingly. The following employee positions are affected:

1. Court Executive Officer of the Superior Court,

2. Assistant Court Executive Officer of the Superior Court,

3. Court Clerk Supervisors,

4. Courtroom Clerks,

5. Legal Processing Clerks.

(Effective 1/1/95; Amended 7/1/01; Amended 1/1/07)

CHAPTER 4
CIVIL LAW AND MOTION RULES

4.00 PREEMPTION OF LOCAL RULES

All local rules related to pleadings, demurrers, ex parte application, motions, discovery, provisional remedies, and form and format of papers have been preempted by the California Rules of Court and applicable provisions of the Code of Civil Procedure. To the extent there is a conflict or inconsistency between the Rules of Court and these rules, the Rules of Court will take precedence. The failure of counsel or a party to comply with the relevant provisions of the California Rules of Court may subject counsel and/or the party to sanctions pursuant to Rules of Court, Rule 2.30.

(Effective 1/1/00; Amended 1/1/07)

4.01 SANCTIONS

Failure to comply with any Local Rule or California Rule of Court may subject the party to sanctions pursuant to California Rules of Court, Rule 2.30; Code of Civil Procedure §177.5, §575.2.

(Effective 7/1/01; Amended 1/1/07)

4.02 FILING OF PAPERS

A. All papers, including moving, opposition, reply papers, proofs of service, matters on shortened time, and ex parte matters must be filed with the clerk of the court. No more than two (2) copies may be submitted for endorsed filing.

All moving and supporting papers shall be filed in conformance with the time requirements set forth in Rule 3.1300 of the California Rules of Court.

Documents submitted for filing which are required to be kept confidential pursuant to statute or court order must contain the word "**CONFIDENTIAL**" in bold caps directly beneath the document title.

B. Failure to comply with the requirements of this rule concerning filing and serving opposing and reply papers may, in the discretion of the court, be deemed cause for acting on the matter without consideration of the document filed in violation of the rule and cause for imposing sanctions. (Cal. Rules of Court, Rule 2.30, Code of Civil Procedure §177.5 and §575.2.)

C. Unless previously filed, proofs of service must be filed five court days before the hearing, or the matter may be dropped from the law and motion calendar.

(Effective 7/1/01; Amended 1/1/07)

4.03 TENTATIVE RULINGS

A. The court operates a tentative ruling procedure for civil law and motion matters. On the afternoon of the court day before a law and motion matter is calendared for hearing, the court shall prepare a tentative ruling for each matter on calendar. Tentative rulings for the next court day will be available after 3:00 p.m. by telephoning (209) 257-2601 which will provide a tape-recorded message. The complete text of the tentative rulings may also be downloaded off the court's web site at http://www.amadorcourt.org/.

B. Parties satisfied with a tentative ruling need not appear at the scheduled hearing, unless ordered to do so by the court. Parties intending to appear and contest the tentative ruling must notify the court and opposing counsel of such intent by 4:30 p.m. on the first court day before the hearing. Unless opposing counsel has been notified of such intent, oral argument will not be permitted.

C. Where appearance has been requested or invited by the court, limited oral argument will be entertained.

D. All noticed motions and demurrers in civil matters shall include the following information in the notice:

"Pursuant to Local Rule 4.03, the court will make a tentative ruling on the merits of this matter by 3:00 p.m., the court day before the hearing. To receive the tentative ruling, call (209) 257-2601. If you intend to appear and contest the tentative ruling, you must notify the court and opposing counsel of such intent by 4:30 p.m. on the first court day preceding the hearing. If you do not provide proper notice to the court and the opposing party no hearing will be held."

E. Absent oral argument, the tentative ruling will become the ruling on the motion.

F. These tentative ruling procedures do not apply in any case in which a self-represented party is in the custody of the California Department of Corrections.

(Effective 7/1/01; Amended 7/1/04; Amended 1/1/08)

4.04 DEFAULT JUDGMENTS BY AFFIDAVIT

If a default judgment is requested by affidavit pursuant to Code of Civil Procedure §585(d), the requesting party shall comply with Rules of Court, Rule 3.1800. The request and accompanying declarations shall be submitted to the clerk. If, after reviewing the materials submitted, the court determines that personal testimony is required, the clerk shall so advise the moving party. If testimony is required, the moving party must apply to the clerk for a hearing date and file the form provided by the court for the setting of default or uncontested matters for hearing.

(Effective 7/1/01; Amended 1/1/07)

4.05 JOINING MOTIONS OF OTHER PARTIES

If a party desires to receive the same relief as another party and files papers "joining" another party's motion, the court will not consider the papers to be a separate motion and will not grant relief to the party joining the motion unless that party has complied with all procedural requirements for the filing of motions, including payment of filing fees, proper notice, format of motion and method of service.

(Effective 7/1/01)

4.06 CONTINUANCES

These provisions apply only to the continuances of law and motion matters and does not apply to the continuances of trial or any matters set pursuant to the Trial Delay Reduction Rules.

If the requested continuance is uncontested, the matter may be re-calendared after consultation with the calendar clerk. The party or counsel requesting the continuance must send a confirming letter to the court prior to the time originally set for hearing with a copy to opposing counsel or parties appearing in pro per. In no event shall the matter be reset more than twice. Failure to provide a confirming letter, as directed herein, will result in the matter being dropped from the calendar.

If the requested continuance is contested, or if the matter has been previously reset by the clerk more than twice, the request shall be made on noticed motion or ex parte application pursuant to the rules set forth herein.

Any court ordered hearing, such as an order to show cause, temporary order, or injunctive order shall require a court order for continuance. The order may be obtained ex parte or by written stipulation of all parties submitted to the court five (5) court days prior to the date set for hearing.

The court must approve any continuance of a motion for summary judgment or a motion for summary adjudication. The order may be obtained by ex parte application. Any request for continuance of such a motion must be made at least five (5) court days before the scheduled hearing.

If any party intends to appear in court to request continuance of a motion, such party shall notify the court at least five (5) court days before the time set for hearing.

(Effective 7/1/01; Amended 7/01/04; Amended 1/1/07; Amended 7/1/09)

CHAPTER 17
PROBATE

17.01 PROBATE TENTATIVE RULINGS

A. The Court operates a tentative ruling proceeding for probate matters. On the afternoon of the court day before a probate matter is calendared for hearing, the court shall prepare a tentative ruling for each matter on calendar. Tentative rulings for the next court day will be available after 3:00 p.m. on the court's website, www.amadorcourt.org.

B. Parties satisfied with the tentative ruling need not appear at the scheduled hearing, unless ordered to do so by the court. Parties intending to appear and contest the tentative ruling must notify the court and the opposing party of such an intent by 4:00 p.m. on the first court day before the hearing. Unless opposing counsel has been notified of such intent, oral argument will not be permitted.

C. When appearance has been ordered by the court, limited oral argument will be entertained.

D. Absent oral argument, the tentative ruling will become the ruling of the court.

E. If the tentative ruling continues the hearing, the petitioner must provide notice of the continued hearing.

F. Excluded from said tentative rulings are hearings on conservatorships and guardians, minor's compromises, contested matters, matters set at a time other than the regular probate calendar, any matters requiring an appearance, and such matters as the court may determine in its sole judgment.

G. The implementation of the tentative ruling procedure is dependent upon Court resources. As such, upon commencement of the tentative ruling procedure, the Court will post a notice of the same on the Courthouse public notice board and on the Court's website.

(Effective 1/1/09)

17.02 ACCOUNTINGS IN GUARDIANSHIPS AND CONSERVATORSHIPS

Pursuant to Probate Code §2620 (c)(3), the private professional or licensed guardian or conservator may elect to lodge with the Court the originals of the account statements referenced in §2620 (c)(1), (2), and (3). The originals of the account statements shall be released by the Court as provided in §2620 (c)(3).

(Effective (1/1/09)

17.03 SUCCESSOR CONSERVATORS AND GUARDIANS

Successor conservators and guardians shall file an Inventory and Appraisal of the estate within 90 days of the date of appointment. (see Probate Code §2610.)

(Effective 7/1/09)

17.04 INVESTIGATOR FEES

Unless investigator fees are waived due to hardship per Probate Code section 1851.5 or 1513.1, the court will assess fees for the cost of investigations in guardianship and conservatorship cases. Petitioners in guardianship cases who do not qualify for waiver of investigation fees may request permission from the court to make monthly payments due to hardship.

Bills will be sent to conservators and guardians or parents, and copies will be set to their attorneys. Upon receipt of the bill, payment must be remitted to the Court within 30 days, unless a proper objection to the same is received.

(Effective 7/1/09)

17.05 DEATH OF CONSERVATEE

Within 30 days of the death of the conservatee, the conservator must file a notice of death of the conservatee with a copy of the conservatee's death certificate attached and must serve a copy of the notice on the Court Investigator's Office.

Within 60 days of the conservatee's death, the conservator must file a final accounting with the court.

(Effective 7/1/09)

17.06 CONSERVATOR'S DUTY TO PURCHASE BOOK AND VIEW VIDEO

Before Letters of conservatorship are issued, all conservators (except corporate or institutional conservators) must obtain a copy of the Handbook for Conservators published by the Judicial Council of California and view a film on the duties and responsibilities of a conservator. Proper proof of the purchase of the handbook and attendance of the film viewing will be required. Viewing of the film is free of charge and may be scheduled with the probate clerk.

(Effective 1/1/10)

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Butte County
Probate Rules

Effective January 1, 2010

LOCAL RULE 12
PROBATE RULES

12.1 GENERAL (Effective 7-1-98, as amended 7-1-99)

12.2 BOND OF PERSONAL REPRESENTATIVE (Effective date 7-1-98)

12.3 SALES BY PERSONAL REPRESENTATIVES (Effective date 7-1-98)

12.4 COMPENSATION OF PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS (Effective 1-1-05)

12.5 OBTAINING A HEARING DATE (Effective 1-1-05)

12.6 RESERVED (Effective 7-1-98)

12.7 PRELIMINARY AND FINAL DISTRIBUTION (Effective 7-1-98, as amended 7-1-02)

12.8 RESERVED (Effective 7-1-98)

12.9 RESERVED (Effective 7-1-98)

12.10 CONSERVATORSHIPS (Effective date 7-1-98, as amended 1-1-03, as amended 7-1-09)

12.11 GUARDIANSHIPS (Effective date 7-1-09

LOCAL RULE 12
PROBATE RULES
(Effective 7/1/98, as amended 7-1-02, as amended 1-1-05)

12.1 GENERAL (Effective 7-1-98, as amended 7-1-99)

(a) Reserved

(b) Form of Papers Presented for Filing.

1. It is the duty of the attorney (or the party appearing without an attorney) to prepare and submit the supporting documents and proposed orders for all matters. All such documents shall include the time and date of the hearing, typed under the caption of the front page.

2. If a Judicial Council form is available for the particular form of relief sought, that form shall be used. The form is to be used in the same format as prescribed and printed by the Judicial Council (i.e. printed in a rolled format so that the reverse side of the document can be read by "rolling" the form as opposed to turning it over). Only current Judicial Council forms are acceptable for filing.

3. A proposed form of order is to be submitted with each petition or motion for relief. Any petition or motion filed without such proposed form of order will not be calendared for hearing until such time as the proposed form of order is submitted.

(c) Procedures for Ex Parte Matters

1. If the ex parte matter is contested or there is a need to converse with the Court, the petition shall so specify. If necessary, the Clerk will contact the attorney of record so the matter can be added to the next available calendar for hearing.

(a) All applications for ex parte orders must contain a list of any and all requests for special notice which have been filed in the proceedings or contain an allegation that no special notice has been requested. If any such notice has been requested, a waiver must accompany the petition.

(b) If it is reasonably likely there will be a dispute or contest as evidenced by documents on file in the proceeding, then all parties must be notified pursuant to California Rule of Court §3.1200-3.1207 of the time and place where the application for the ex parte order will be made. Proof by the attorney's declaration of such notification shall accompany the petition.

2. For good cause, the Court may require a noticed hearing before approval of any matter.

(Effective 7-1-98, as amended 7-1-99)

12.2 BOND OF PERSONAL REPRESENTATIVE

(a) Amount of Bond.

1. Unless the requirements of Prob C §8481 are met, a bond will be required of every person appointed as a personal representative. As a general policy, the Court will require at least a $10,000 minimum bond even if the value of the estate is less than $10,000.

2. A petition to appoint a personal representative should set forth the estimated value of real property, personal property, and the estimated annual income from all property.

3. If the estimated value of the assets of the estate is not known at the time of the filing of the petition for appointment, ordinarily the personal representative must appear at the hearing to testify as to the estimated value of estate assets.

4. If written waivers are attached to the petition, bond will ordinarily be waived by the Court pursuant to Prob C §8481, provided all heirs or beneficiaries are competent to act. If any such persons are incompetent (e.g., minors), an appropriate representative must waive bond on their behalf.

(b) Methods of Reducing Bond.

1. There are three basic methods for obtaining a reduction of bond.

A. The first is to deposit or invest a specified amount of assets before the order of appointment is made, obtain a receipt and agreement to hold the assets in a blocked account, and offer the receipt and agreement in evidence when the petition for appointment comes on for hearing. The facts upon which the reduced bond is sought should be set forth, either in the original petition for appointment or in a separate petition to be heard simultaneously.

B. The second is to obtain in the order appointing the representative, a provision that if assets are deposited or invested in blocked accounts the bond may be fixed in a reduced amount. A receipt for the deposit must be obtained from the depositary and filed with the Clerk. The Clerk is then authorized to issue letters upon the filing of a bond in the reduced amount.

C. The third is to obtain a reduction of bond after the representative has qualified and entered upon the administration of the estate. If a deposit and reduction in the amount of the bond is anticipated, this may be covered in the original order of appointment; if not, a subsequent petition should be filed. It is often convenient to present this petition with the first annual account. Petitions to decrease bond are subject to a hearing with notice given to all heirs or beneficiaries.

2. Limitation of Amount on Deposit With One Financial Institution: Monies in blocked accounts shall not exceed the limit of Federal Deposit Insurance Corporation insurance for each individual bank or savings and loan association. The attorney shall immediately file an ex parte petition for an order authorizing establishment of additional blocked accounts into which funds exceeding the insurance limit shall be deposited.

3. Corporate and Individual Executors: A corporate executor cannot assume responsibility for the acts of individual co-executors. Individual executors must provide bond as required by law. If a deposit is made under the provisions of Prob C §8483 to reduce bond, it must be made jointly by the corporate and individual co-executors.

4. Bond of Nonresident Personal Representative. A personal representative who is a nonresident of California and who is nominated to serve without bond may nevertheless be required to post such bond as the Court may require. Ordinarily, the amount of the bond will be the minimum bond in effect in Butte County which is currently $10,000. However, in the Court's discretion, the maximum amount may be imposed, which is the value of the personal and real property, plus the amount of estimated income for one year for both the personal and real property. This rule applies even if there are co-executors and one or more are California residents. In the case of a personal representative who is also the sole beneficiary, the same rule applies for the protection of potential creditors.

5. Multiple Representatives. When multiple representatives are appointed by an order which directs that "letters shall issue to them", the Clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be so provided in the order of appointment.

6. Distributee's Bond. This Rule addresses the bond required by a personal representative to administer an estate. In certain circumstances, such as a preliminary distribution, a bond may be required of the distributee. (See Prob C §11622)

(Effective date 7-1-98)

12.3 SALES BY PERSONAL REPRESENTATIVES

(a) Sales of Real Property—Appraisal Within One Year.

1. Probate Code §10309 requires that real property to be sold in an estate proceeding must be appraised within one year prior

to the date of the court confirmation hearing. Probate Code §8802 requires that the first appraisement of all property be as of the date of death. All appraisals must reflect the fair market value of the property.

2. When the date of the confirmation hearing is more than one year after date of death, a reappraisal for sale (on the Judicial Council form) must be filed with the Court before the confirmation hearing can proceed. Reappraisals must be made by the probate referee unless appointment of the referee has been waived by the Court.

3. The following phrases should be inserted in the reappraisal for sale immediately after the legal description of the real property:

Appraised as of date of death

[insert month, day and year] $ _____

Appraised as of

[insert CURRENT month, day and year] $ _____

4. The sum offered for the property must be at least 90 percent (90%) of the appraised value of the property within one year prior to the confirmation hearing. (Prob C §10309)

(b) Bond on Sale of Real Property.

1. Petitions for confirmation of sale of real property shall set forth the amount of bond in force at the time of the sale and the amount of property in the estate which is required to be covered by a bond. (See Prob C §8482) If no additional bond is required or if bond is waived, that fact should be alleged in the petition.

2. Personal representatives subject to a bonding requirement who have full authority under The Independent Administration of Estates Act shall post their initial bond upon qualification in an amount sufficient to cover all personal property, income for one year from all sources, and the estimated proceeds of the sale of the real property. (See Prob C §10453)

(c) Brokers' Commission on Sale of Real Property.

1. Improved Property: Upon the confirmation of sale of improved real property, the Court ordinarily will allow a broker's commission not to exceed six percent (6%), or such lesser percentage as has been negotiated between the personal representative and the broker subject to net sale amount.

2. Unimproved Property: A broker's commission not exceeding ten percent (10%) of the first twenty thousand dollars ($20,000.00), eight percent (8%) of the next thirty thousand dollars (30,000) and five percent (5%) of the balance of the sales price, ordinarily will be allowed for the sale of unimproved real property. The Court will determine, in each instance, whether property is "unimproved property".

3. Agents or brokers bidding or overbidding on their own behalf or on behalf of an entity of which they are part owner will not be allowed a commission. (Prob C §10160.5)

4. The Court will not consider whether a broker is employed when receiving overbids.

5. Divisions of Commissions. Counsel is referred to Prob C §§10160 et seq.

(d) Cash Deposit to Accompany Bid on Real Property.

1. Bids for the purchase of real property shall be accompanied by a minimum of ten percent (10%) of the amount of bid. When an overbid is made in court, the bidder shall submit cash, money order or certified check at the time of the hearing in the amount of ten percent (10%) of the minimum overbid. (The minimum overbid is an increase over the bid returned to the Court by ten percent (10%) of the first ten thousand dollars ($10,000) and five percent (5%) of the balance of the sales price.) Overbids shall be in accordance with Prob C §10311.

2. At the request of the attorney for the estate selling the real property, or on the Court's own motion if good cause exists, the Court may relax the requirements set forth above. The petition for confirmation of sale or the request made in open Court should state the reasons for the lower deposit (e.g., all-cash financing by the Veteran's Administration, or by Cal-Vet or by some other governmental agency.)

(e) Notice of Sale of Property Sold. Notices and returns of sale should provide a common as well as a legal description of the property sold, as well as the Assessor's Parcel Number.

(f) Terms To Be Stated in Notice of Sale of Real Property.

1. Counsel should use extra care in wording of the published notice of sale. If the property is being sold subject to an encumbrance, the notice should so state. (See Mains v. City Title Insurance Co., 34 Cal.2d 580 (1949) It is advisable that the notice call for "[c]ash or cash and such credit terms and conditions as the Court may approve."

2. The terms of the sale shall be consistent with the terms stated in the notice.

(g) Disclosure of Extraordinary Costs on Sale of Real Property.

1. The petition shall include a full disclosure of all extraordinary costs which the estate will incur as a result of the sale. Such costs include, but are not limited to, termite and other repairs, lender's "point," loan fees and nonrecurring closing costs. The exact amounts required or the maximum which the estate will be required to pay shall be disclosed in the petition and included in the order.

2. Extraordinary costs will be deducted from the gross bid, and the resultant "net" will be used for the following purposes:

A. Determination if the sale is within ninety percent (90%) of appraised value;

B. The base figure against which overbids are made; and

C. The real estate broker's commission. The above amounts shall be set forth in an attachment to the petition.

(h) Notice of Confirmation Hearing. In addition to the requirements of notice contained in Prob C §10308(c), notice of the Court hearing for confirmation of a sale of real property shall be mailed at least fifteen (15) days prior to the hearing date to all heirs and beneficiaries who may have an interest in the subject real property.

(i) Appearance by Bidder. Counsel should advise the original bidder, together with any potential bidders and their representatives, to be in Court at the time the petition for confirmation of sale is heard.

(j) Exclusive Listings.

1. Personal representatives with authority to administer the estate under the Independent Administration of Estates Act need not obtain a Court order to enter into an exclusive listing for real property.

2. Personal representatives who determine it is necessary or advantageous to seek such a Court order shall observe the following:

A. Such petitions shall be granted only where a clear showing of necessity and advantage to the estate is made. Ordinarily, these petitions will be granted ex parte. Facts indicating necessity and advantage might include: past unsuccessful exposure, condition of the property and/or neighborhood, out-of-country residence of personal representative, or a contract which pre-dates the establishment of the court proceeding.

B. The petition and proposed order shall also include the name of the broker, address of the property, the fact that the Court sets commissions and that they are payable only if the sale is confirmed, and that all commissions are payable in accordance with Prob C §10160 et seq. The duration of the contract must be specified. Ordinarily, the Court will not approve a term exceeding ninety (90) days.

C. A copy of the listing agreement should be submitted with the petition. The listing agreement must conform to the conditions set forth above and shall further set forth in detail the obligations and duties of the broker, including but not limited to the requirement to list on Multiple Listing Service(s), place signs and advertise in newspaper[s].

D. Extensions of listing agreements shall follow the above procedures.

(k) Sales of Perishable or Depreciating Property. If the Estate contains perishable or depreciating property, it should be disposed of promptly. If there has been an unreasonable delay in disposing of perishable or depreciating property, the Court may hold the personal representative accountable for the decreased value of the property.

(l) Sale of Property Specifically Devised or Bequeathed. On a sale of property specifically devised or bequeathed, either notice of the time and place of the hearing of the return of sale shall be given to the specific devisee or legatee, or the consent of such devisee or legatee to such sale shall be filed with the Court.

(m) Sale of Securities

1. Subject to Order of Court.

A. A verified petition for authorization of sale of stocks, bonds or other securities described in Prob C §10200 must contain an allegation regarding any request for special notice and compliance with such request and one or more of the following:

(1) Statement as to necessity for sale, giving reasons, i.e., taxes, expenses of administration, indivisible number of shares, etc.

(2) Consent or request of heirs; if the securities are specifically bequeathed, the petition should so allege and the written consent of the legatee should be filed.

(3) An allegation that a power of sale is conferred by the will.

B. If Securities are not listed on an established stock or bond exchange, they may be sold at a minimum price per share or bond, based on a recent market quotation, set forth in the petition. The market quotation may be obtained from financial publications or from securities brokers. If such securities are "closely held," or there are no recent market quotations available, the petition should set forth the basis for fixing the minimum sales price (e.g., inventory and appraisement value).

2. Subject to Independent Administration of Estates Act (Prob C §§10400 et seq.)

A. A personal representative with authority to administer the estate under The Independent Administration of Estates Act may sell securities listed on an established stock or bond exchange and other assets referred to in Prob C §10537, when sold for cash, without court order. The sale shall be reported in the account and report filed by the personal representative.

B. Notwithstanding the above, real or personal property may be sold in accordance with the provisions of Prob C §10400 et seq.; provided, however, that any person objecting to a proposed action under Prob C §10400 et seq. shall give notice to the personal representative at least forty-eight (48) hours in advance if he or she petitions the Court for an order restraining such sale, and the petitioner must show good cause.

(Effective date 7-1-98)

12.4 COMPENSATION OF PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS

(a) Commissions and Fees Must Be Fixed by Court

1. There is no authority for payment of any commissions or fees in advance of the court authorizing such payment. Where commissions or fees are paid in advance of court authorization, at the time of the accounting or other request for approval of compensation, the Court ordinarily will require an appearance by counsel or declaration stating the reasons therefore. The Court may require the personal representative or the attorney respectively to pay interest at the applicable legal rate from the date of payment to the date of the order authorizing the same, or may impose a surcharge, or may impose both interest and a surcharge.

2. When requests for fees are for services performed, the detail must reflect that time which was spent by the attorney, that spent by a paralegal, and that spent by a secretary. For each such person performing services for which compensation is being requested, the hourly rate charged for each such person or classification is to be set forth. The qualifications of a "paralegal" are to be set forth whenever fees are requested for services performed by a paralegal.

3. All contingency fee contracts to which the personal representative is a party, shall be submitted to the Court in advance for approval. A copy of the contingency fee contract shall be attached to the petition requesting approval.

(b) Compensation for Extraordinary Services

1. Application for compensation for extraordinary services must include detail of what was done, and how much time was spent by whom, in performing services for the ordinary fee. Under ordinary circumstances, extraordinary fees will not be awarded where the time spent in ordinary representation, plus the time spent in performing the extra ordinary services, does not exceed the statutory fee for the estate.

2. Applications for fees or commissions for extraordinary services shall be accompanied by a complete statement of facts upon which such application is based and shall specify the amount requested for each item of service, not merely a "reasonable amount." The services claimed to be extraordinary shall be described in detail, including dates, time spent, necessity for the work, complexity of legal and/or factual issues and results accomplished. Submission of itemized time sheets by themselves will ordinarily not be sufficient to establish a claim for extraordinary services. Each specific area or item of extraordinary service should be segregated into different categories, such as litigation, sale of real property (or where applicable two categories for two sales of real property), preparation of federal estate tax return, other tax work, etc. Where applicable, each category of extraordinary service should be segregated into subcategories such as correspondence, discovery, settlement discussions, trial proceedings, etc. For each category of service, specify the total number of hours spent by each attorney or paralegal and specify the hourly rate of each individual and provide some description of the experience and expertise of each individual providing extraordinary service. All information should be provided in a declaration or declarations under penalty of perjury.

3. Compensation for extraordinary services ordinarily will not be approved before the final accounting except in cases where it is shown to the Court's satisfaction that the estate or heirs will benefit, e.g., where it would be beneficial to reduce income taxes in a given fiscal period, or where ongoing litigation precludes presentation of a final accounting and attorneys must be retained or compensated to represent the estate in ongoing litigation. The Court ordinarily will allow extraordinary compensation for representing the estate in litigation outside of the regular administration of the estate upon a properly noticed petition upon completion of the service. Upon a proper showing, the Court may authorize progress payments prior to completion. Where the attorney or personal representative requesting a progress payment prior to completion of extraordinary work believes that public disclosure of the information required by subparagraph 2 immediately above may adversely affect the estate's interest in ongoing litigation, the petitioner may include an allegation in the petition stating why the detailed information has been deleted from the petition and that said detailed information is concurrently being filed with the Court in a sealed envelope with a request for an in camera inspection. If it is shown to the satisfaction of the Court that said detailed information may adversely affect the estate's interest in ongoing litigation, the Court will ordinarily order that the matter remain under seal until the resolution or termination of the ongoing litigation.

4. Extraordinary compensation and costs of a will contest before probate, a petition to revoke a will after probate, and/or a petition to determine personas entitled to distribution from the estate will not be allowed from the estate unless it is shown to the Court's satisfaction that the personal representative was under a legal obligation to defend or prosecute such contest or proceeding or that the heirs and beneficiaries received a benefit so that on distribution they bear the compensation and costs in proportion to their distributive shares. (See Estate of Pryor 51 Cal.App.2d 735 (1942))

5. When evaluating a request for extraordinary compensation, the Court may consider whether the statutory compensation is sufficient to compensate adequately for all services that have been rendered and may request a declaration of the attorney or the personal representative substantiating all services required.

(c) Expenses of Accounting May Be Deducted From the Personal Representative's Statutory Compensation. The personal representative may employ tax counsel, tax auditors, accountants, or other tax experts for the preparation of tax returns and for the other tax-related services. To the extent that the personal representative utilizes the services of such counsel, auditors, accountants, or other experts to perform ordinary accounting and bookkeeping services, including the preparation of the schedules for court accountings and pays for such services from the funds of the estate, the Court may deduct any such sums so paid from the funds of the estate from the personal representative's statutory commission.

(Effective date 7-1-98)

12.5 OBTAINING A HEARING DATE (Effective 1-1-05)

Parties or counsel seeking to calendar any hearing must contact the Clerk at (530) 532-7017 to determine available hearing dates and obtain a reservation before filing the moving papers. Nothing in LR §12.5 shall be construed to alter notice or other procedural requirements applicable to such filings.

(Effective 1-1-05)

12.6 RESERVED (Effective 7-1-98)

12.7 PRELIMINARY AND FINAL DISTRIBUTION (Effective 7-1-98, as amended 7-1-02)

(a) Forms of Decrees. A decree of distribution shall be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as to the decedent's will. If the distribution includes any interest in real property, the legal description shall be included in the body of the decree or in an attachment incorporated by reference.

(b) Distribution to Minors of Cash up to $20,000.00.

1. Court policy requires that any cash distributed to a minor be placed in a blocked account at a bank or savings and loan association. Withdrawals from such account shall be allowed only pursuant to a court order. Before the Court will order such a distribution under Prob C §3401, the written assurance required under §3401(c)(2) must be filed with the Court. [See Judicial Council Forms MC 355 & MC 356]

2. The personal representative shall file a receipt acknowledged by the financial institution indicating the deposit of cash into a blocked account.

3. Ordinarily, withdrawals requested during minority may be obtained ex parte upon a showing of good cause. The Court will treat all such requests in a conservative manner in order to preserve the funds for the minor's use upon reaching majority.

4. When the minor reaches age eighteen (18), ex parte application may be made to the Court for an order to release the funds directly to the beneficiary. A certified copy of the birth certificate shall be attached to the petition.

5. In the absence of a guardianship, the estate action number may be used for the filing of documents pertaining to the assets distributed under this section.

(Effective 7-1-98, as amended 7-1-02)

12.8 RESERVED (Effective 7-1-98)

12.9 RESERVED (Effective 7-1-98)

12.10 CONSERVATORSHIPS (Effective date 7-1-98, as amended 1-1-03, as amended 7-1-09)

(a) Reserved

(b) Court Investigator (Effective date 7-1-98, as amended 1-1-03)

1. In all cases, the petitioner or his or her attorney must submit a completed Court Investigator Information Sheet to the Office of the Court Investigator at least forty (40) days prior to the hearing for appointment. This sheet shall be left with the Clerk's Office at the time of the filing of the petition for appointment of a conservator.

2. The provisions of the Probate Code concerning the duties of the Court Investigator apply whether or not the proposed conservatee is the petitioner, [contrary to Probate Code §1826(o).]

3. The Court Investigator must be informed immediately of any change of address for the conservatee, the conservator or any attorney of record. This may be accomplished by submitting a new Court Investigator Information Sheet.

4. After filing, the Court's file will be submitted to the Court Investigator for his use.

5. Assessment for the cost of the Court Investigator's investigation shall be paid as ordered by the Court. Prob C §1851.5 permits the county to waive or defer such fee in case of hardship. Assessments will be billed to the estate or, where applicable, to a trust where the conservatee is a beneficiary. Conservator shall provide the Court Investigator's Office with the current address of the trustee of any such trust.

6. Assessments shall be paid to the Central Collections Department.

7. Original plus one copy required of the following at the time of filing for use by the Court Investigator: Petition for Appointment, Confidential Supplemental Information, Confidential Screening, Court Investigator's Information Sheet, doctor reports and Accountings.

(c) Temporary Conservatorship

1. Ordinarily, no petition for appointment of a temporary conservator will be considered by the Court prior to the filing of a petition for appointment of a permanent conservator.

2. The petition for appointment of a temporary conservator may be brought ex parte, provided that the provisions for notice to proposed conservatee required by law are satisfied, either by giving notice to the proposed conservatee or by submission of a declaration showing facts sufficient to allow the Court to determine that good cause exists to eliminate or alter the notice requirements and provided that the following information is submitted:

A. The original and copy of the petition and proposed order;

B. A detailed statement of facts in the petition establishing the necessity for the temporary conservatorship; and

C. An endorsed, filed copy of the petition for appointment of the permanent conservator.

D. If the attorney is informed that the petition for appointment of a permanent conservator will be contested, all known potential objectors shall be notified at least forty-eight (48) hours in advance of the time and place the petition for appointment of the temporary conservator will be presented. However, if facts are found which make it clear that the notice required by this section would tend to adversely affect the conservatee or the conservatee's estate, notice to potential objectors may be waived upon a showing of exigent circumstances.

3. Ordinarily, the Court will require a bond for temporary conservators of the estate.

4. Letters of temporary conservatorship expire on the date of the hearing on the appointment of the permanent conservator or thirty (30) days after appointment of the temporary conservator, whichever is earlier, unless the Court extends the termination date pursuant to Prob C §2257.

(d) Independent Exercise of Powers. No powers specified in Prob C §2591 will be granted in the absence of a clear and convincing factual showing that the grant of each power requested is needed to administer the estate, and that the grant of such power is for the advantage, benefit and best interests of the estate.

(e) Conditions for Appointment of Individual Conservators

1. Bond of Conservator. Bond for an individual conservator of the estate shall not be waived. Under special circumstances, the Court in its discretion may order a reduced bond where the conservatee, having sufficient capacity to do so, has waived or requested bond amount. Bond of the conservator may be reduced by deposit of assets into block accounts.

2. Handbook. Prior to the hearing for appointment of conservator, the proposed conservator shall purchase the "Handbook for Conservators" along with the "Local Supplement to Handbook For Conservators" at the Clerk's Office.

3. Duties of Conservator. A completed form "Duties of Conservator" and "Confidential Conservator Screening Form" (JC Form GC348 and GC314) shall be filed simultaneously with the petition for appointment.

(f) Allowance of Fees in Conservatorship Proceedings.

1. No fees will be ordered paid in conservatorship proceedings until the filing of the inventory, but in no event until the expiration of ninety (90) days from the issuance of letters, pursuant to Prob C §§2640-2642.

2. Conservators of persons or estates or both and attorneys may petition the Court for just and reasonable compensation earned

to the date of filing the petition. The petition for compensation shall set forth the hours spent and services performed by the conservator, the attorney and any paralegal. At the time of filing the first accounting, the conservator and attorney (and the attorney on behalf of the paralegal) may petition the Court for compensation, or additional compensation earned from the date of a prior award, by setting forth the hours spent and the services performed. Ordinarily, reasonable compensation for conservators shall not exceed thirty dollars ($30) per hour.

3. Fees for services which could ordinarily be provided by someone of less skill than the conservator (such as running errands, shopping and the like) will be compensated at a rate which one might expect for the performance of such duties rather than at a rate which might be appropriately paid to the Conservator for services which require the skill, training and expertise of a conservator.

A. In the event the attorney for a conservator performs some of the administrative and bookkeeping functions normally performed by the conservator, the attorney may be awarded a larger amount of the combined fees and the conservator allowed a smaller portion thereof so that the total compensation awarded is no larger than that provided for under the guidelines set forth above.

4. Where all or a portion of the fee awarded exceeds cash on hand in the estate, the Court may, in appropriate circumstances, issue its order imposing a lien for fees on any or all of the assets in the estate. Ordinarily, enforcement of the lien will be deferred until the assets of the estate subject to the lien have been liquidated for reasons other than the satisfaction of the unpaid fee.

5. To be valid, contingent fee contracts with an attorney require prior court approval. It is advisable for the attorney to petition the Court for its approval prior to rendering services.

6. The title of the petition embodying an application for the payment of fees and of the notice of hearing of such petition shall include a reference to the request.

7. Compensation to an attorney representing a conservatee may be ordered at the conclusion of the hearing on the appointment of the conservator.

(g) Private Professional Conservators.

1. Registration. All parties who fit the definition of a Private Professional Conservator as described in Prob C §2341 must register with the Clerk's Office. Contact the Clerk's Office for the current fee. One set of fingerprint cards and a Certificate of Registration of Private Professional Conservator are required when registering.

(h) Appointment of Legal Counsel. Appointment of legal counsel pursuant to Prob C §§1470 and 1471 is made in the following manner:

A. If the conservatee or proposed conservatee is developmentally disabled or indigent, the Butte County Public Defender is appointed;

B. If the conservatee or proposed conservatee is not indigent, [1] Legal Assistance for Seniors is appointed if the conservatee or proposed conservatee is over the age of sixty (60) years, or [2] if under the age of sixty (60), an attorney's name is obtained through the Court list of attorneys available for appointment. If a conservatee or proposed conservatee has retained legal counsel independently, the representation is subject to approval by the Court.

(i) Accountings

A. The conservator or successor conservator may either arrange to pick up the original lodged confidential supporting documents or provide a self-addressed stamped envelope for their return upon final determination and approval of the conservator's account by the court.

(Effective date 7-1-98, as amended 1-1-03, as amended 7-1-09)

12.11 GUARDIANSHIPS (Effective date 7-1-09)

(a) Reserved

(b) Reserved

(c) Reserved

(d) Reserved

(e) Reserved

(f) Reserved

(g) Reserved

(h) Reserved

(i) Accountings

A. The guardian or successor guardian may either arrange to pick up the original lodged confidential supporting documents or provide a self-addressed stamped envelope for their return upon final determination and approval of the guardian's account by the court.

(Effective 7-1-09)

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Calaveras County
Probate Rules

Effective January 1, 2010

PROBATE RULES

7.1 COMPENSATION FOR GUARDIANS, CONSERVATORS, TRUSTEES AND THEIR COUNSEL, AND FOR COUNSEL FOR A CONSERVATEE OR WARD

(a) A petition for compensation of a guardian, conservator, trustee and counsel, or for counsel for a conservatee or ward shall be accompanied by an itemized statement of the services rendered, an explanation of the value or benefit of those services to the estate, and the total amount requested for such services, made under penalty of perjury, and executed by the person rendering the services.

(b) The court shall evaluate a petition for just and reasonable compensation according to the services performed, time expended, average hourly rate, results accomplished, and benefit to the conservatee/ward and/or the estate. A conservator or guardian who is a professional may not necessarily be compensated for all services rendered at that person's ordinary professional rate.

(c) No compensation shall be paid from the estate to: an executor, administrator, guardian, conservator, or attorney for any such fiduciary, or to an attorney for the conservatee or ward in advance of a court order authorizing such payment.

(Effective 7/1/98)

7.2 CLAIMS OF MINORS AND INCOMPETENT PERSONS

7.2.1 Application for Appointment of Guardian Ad Litem

(a) Petitions for appointment of a guardian ad litem for a minor or incompetent person shall be submitted to the clerk. When an application is made for appointment of a guardian ad litem and the nominee for appointment is a plaintiff in the same action with the ward, or in some manner was a participant in the transaction or occurrence giving rise to the alleged injury to the ward, the nominee will ordinarily not be appointed unless the application is accompanied by:

(1) A declaration under penalty of perjury setting forth facts establishing that no other parent, relative, or friend can or will accept the appointment of guardian ad litem for the minor in the action; and

(2) A declaration under penalty of perjury by the attorney for the nominee stating that the attorney, having investigated the circumstances, has represented to the nominee and represents to the court that there is no conflict of interest between the nominee and the minor if the nominee is appointed the guardian ad litem.

(3) If an attorney's contract is submitted for approval at the time of appointment of a guardian ad litem, approval thereof will not be considered approval of a fee. If a lien on any recovery is provided for in such a contract, such will be allowed only to the extent of costs and services actually and reasonably provided on behalf of the ward.

(Effective 7/1/98)

7.2.2 Compromise of Claims and Attorney's Fees

(a) A petition to compromise a minor's or incompetent's claim pursuant to Section 372 of the Code of Civil Procedure or any petition for approval of a claim under the provisions of Section 3500 of the Probate Code shall contain the following information:

(1) *Facts* — A brief statement which sets forth the facts which establish liability. This statement shall include the name and birth date of the minor or incompetent person as well as a copy of any existing accident investigation report of any police agency.

(2) *Medical Issues* — A statement which outlines all medical treatment furnished, to date, what future medical, if any, is expected to be required and the nature and extent of any permanent injuries, sustained by the minor. This statement shall be supported by a current report or letter from the treating physician outlining the present condition and prognosis of the minor or incompetent person.

(3) *Medical Expenses* — The total medical expenses incurred by the minor to date and the estimated cost of any anticipated medical attention which will be required in the future.

(4) *Reasonableness of Fees*—A reasonably detailed declaration setting forth all effort expended on behalf of the minor in obtaining the settlement and how it was expended. Absent unusual circumstances or conditions, the approved attorney fees for a minor's compromise case should not exceed twenty-five percent of the settlement amount, if the settlement occurs before the case is assigned to a department for trial. The declaration should address all of the following factors: What was the degree of difficulty involved? How much skill was needed and employed? How much risk was there of a poor final result for the amount of work done? How much money, if any, did the attorney advance? How many hours of work did the attorney do? Whether the attorney's fee is contingent on recovery. *For additional information see Niederer v. Ferriera [1987] 189 Cal. App. 3d 1485*.

(5) *Available Coverage*—Where the injuries (damages) clearly exceed the amount of the insurance policy being offered, the statement shall also include a recitation of all steps taken to determine if any additional coverage or assets are available from which the minor could seek compensation.

(6) *Reasonableness of Settlement*—Any additional information that may be of assistance to the court in determining if the petition should be granted or would assist the court in determining reasonable compensation for the attorney in the case. This statement shall include the amounts, if any, paid, or to be paid, to any other claimants, including whether the guardian ad litem is a plaintiff in any action arising from these facts or circumstances and any sums received therefore.

(b) Costs—Allowable costs (CCP 1033.5) paid or incurred by the attorney will ordinarily be deducted from the judgment/settlement prior to computation of fees.

(c) Settlement Proceeds—If the petition for approval of a claim under Section 3500(b) of the Probate Code relates to a structured settlement calling for future periodic payments, the petition shall state the cost of the annuity. In cases involving minors, the order shall contain the date when the minor will attain the age of 18 years and a directive to the bank, trust company or other financial institution to release all funds to the minor on such date without further order from the court. In any case in which the court orders the sum to be received by the minor to be deposited in a financial institution, the order shall contain the further order that, "A certified copy of this order shall be delivered to the manager of said financial institution, together with the sum to be deposited therein, and that there shall be a written receipt of said financial institution forthwith filed with the clerk of the court in which the compromise was approved, acknowledging receipt of both the sum deposited and said order.

(Effective 1/1/02)

7.2.3 Withdrawal of Funds

Requests for withdrawal of funds deposited for minors prior to age of majority and/or incompetent persons will be allowed only upon a verified petition, and subject to the following:

(a) The certificate of deposit must have been completed and filed prior to filing of the petition for withdrawal.

(b) In the event the petition to withdraw funds is based upon the denial of a public agency providing public assistance to provide funds because of the existence of the account, a copy of the written notice from the agency concerned, so stating, shall be attached to the petition.

(c) In addition to the trustee/guardian, minors age fourteen (14) or over shall sign and date the application.

(d) Except for withdrawals to pay taxes on minor's funds, orders for withdrawals will ordinarily not be granted if either or both parents are living and financially able to pay the requested expenditure.

(e) Within fifteen (15) days from the date of the order, a declaration of expenditures made with the funds shall be filed with the clerk.

(Effective 7/1/98)

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Colusa County
Probate Rules

Effective January 1, 2007

SECTION 15

PROBATE RULES (SUPERIOR COURT, ONLY)

15.01 CAPTION OF PETITIONS AND POSTING

15.02 SIGNING AND VERIFICATION OF PLEADINGS

15.03 ADDITIONAL NOTICE REQUIREMENTS

15.04 WORDING OF PROBATE ORDER

15.05 TIME FOR SUBMITTING ORDERS AND AFFIDAVITS OF PUBLICATION

15.06 UNCONTESTED MATTERS

15.07 ORDER FOR FAMILY ALLOWANCE

15.08 NONSTATUTORY FEES AND COMMISSIONS

15.09 REQUIRED MATTERS IN A PETITION FOR FINAL DISTRIBUTION

15.10 REQUIRED FORM OF ACCOUNTS

15.11 PETITION TO ESTABLISH FACT OF DEATH

15.12 CONSERVATORSHIPS — GENERAL PLANS

15.13 GUARDIANSHIPS — ANNUAL REPORTS

15.01 CAPTION OF PETITIONS AND POSTING

The caption of a petition shall be all-inclusive as to the order sought so that the matter may be properly calendared and posted, and any filing fees determined. If any part of the estate is to be distributed to a trust, the caption shall so indicate.

(Adopted 7/1/92)

15.02 SIGNING AND VERIFICATION OF PLEADINGS

Pleadings shall be signed by the attorney and each representative, trustee, guardian, or conservator. The pleadings shall be verified by a representative, trustee, guardian, or conservator personally and not by the attorney.

(Adopted 7/1/92)

15.03 ADDITIONAL NOTICE REQUIREMENTS

A copy of the petition shall be served with each notice of hearing when served on a person requesting special notice or where the petition is the accounting of a testamentary trustee. Where the fiduciary or attorney is requesting fees or commissions other than those computed by Probate code Sections 10800 and 10810, the notice of hearing and a copy of the petition shall be served on all interested parties. The proof of service shall show service of the copy of the petition as well as the notice of hearing.

(Adopted 7/1/92)

15.04 WORDING OF PROBATE ORDER

Probate orders shall be worded so that their general effect may be determined without reference to the petition on which they are based.

(Adopted 7/1/92)

15.05 TIME FOR SUBMITTING ORDERS AND AFFIDAVITS OF PUBLICATION

All orders prepared by the moving party and affidavits of publication shall be filed or lodged with the clerk at least three (3) court days before the date of hearing.

(Adopted 7/1/92)

15.06 UNCONTESTED MATTERS

(A) **Appearance of counsel.** (Probate Code Section 1000)

(1) Except as otherwise provided by law, all verified petitions in probate matters may be deemed submitted without an appearance, except that the attorney or petitioner shall appear on a petition for confirmation of sale of (1) real property, (2) personal property valued in excess of one hundred dollars ($100). As used in this rule, "verified" means verified by the petitioner. Before denying any petition where there is no appearance under this rule, the court will continue the matter two (2) weeks, or until the next succeeding calendar, whichever is later, to give the petitioner or the petitioner's attorney opportunity to appear. If there is no appearance or other response by the petitioner or the petitioner's attorney at the continued hearing, the court may drop the matter from the calendar.

(2) The petitioner or the petitioner's attorney shall appear on all petitions for appointment of guardian or conservator.

Comment: It is the responsibility of the attorney to determine whether the matter has been approved or continued.

(Amended, effective 7/1/97)

15.07 ORDER FOR FAMILY ALLOWANCE

The duration of an order for family allowance is limited to six (6) months if no inventory and appraisement has been filed, and is limited to one year if an inventory and appraisement has been filed.

Comment: The court discourages requests for retroactive (nunc pro tunc) payment of family allowance. Requests for family allowance should be made in a timely fashion.

(Adopted 7/1/92)

15.08 NONSTATUTORY FEES AND COMMISSIONS

A petition for services other than statutory compensation rendered in a probate or other proceeding shall include: (1) a declaration by the attorney, personal representative, trustee or other fiduciary of the services rendered or to be rendered by each of them itemizing their services by date, time and service rendered; (2) the sum requested for each item of service, together with the total amount requested for such services (and not merely "reasonable fees"); and (3) a reference in the caption and prayer to the additional fees. In determining such fees, the court shall consider the difficulty of the tasks performed, the reasonable value of time expended, the amount of the estate accounted for, and whether an accounting is waived.

(Adopted 7/1/92)

15.09 REQUIRED MATTERS IN A PETITION FOR FINAL DISTRIBUTION

In addition to items otherwise required by law, a petition for final distribution shall contain the following matters, unless set forth in the account and report:

(A) A full and complete description of all assets on hand.

(B) Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

(C) A computation of the attorney fees and representative commissions requested.

(D) A statement regarding payment of all taxes pursuant to Probate Code Section 9650.

(E) If the decree of distribution is to distribute assets in kind in a manner that all persons will not share equally in each asset and the distribution is other than pursuant to the will or the laws of intestate succession, then an agreement must be signed by each heir and devisee with the signatures acknowledged accepting the plan of distribution.

(F) A schedule of claims showing the name of the claimant, amount claimed, date presented, date allowed, and, if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice or rejection with affidavit of mailing to the creditor must be filed.

(G) The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

(H) An itemization of costs for which counsel has been paid or is seeking reimbursement. Ordinary overhead items, including, but not limited to, costs of duplication of documents, telephone calls, and automobile mileage are not proper cost items.

(I) A schedule showing the proration of taxes, fees, and costs.

(J) A statement of what property is separate and what property is community.

(K) If distribution is to be made pursuant to an assignment of interest, the assignment shall be filed and acknowledged and the details of the consideration set forth.

(L) If distribution is to be made to a trust, either an acknowledged statement by the trustee accepting the property under the terms of the trust, or a petition by the executor or administrator for the designation of a substitute trustee shall be filed.

(M) If the distribution is to be made to a minor or an incompetent, either facts showing compliance with Probate Code Section 3300, et seq., or current certified copies of letters of conservatorship or guardianship of the estate shall be filed.

(Adopted 7/1/92)

15.10 REQUIRED FORM OF ACCOUNTS

All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, shall contain a summary or recapitulation showing:

(A) Amount of inventory and appraisement if first account, or amount chargeable from prior account.

(B) Amount of receipts, excluding capital items.

(C) Gain on sales or other disposition of assets.

(D) Amount of disbursements.

(E) Loss on sales or other disposition of assets.

(F) Amount of property on hand.

A suggested form of summary is as follows:

The petitioner is chargeable and is entitled to the credits, respectively, as set forth in this summary of account. The following supporting schedules are attached hereto and incorporated herein by reference:

SUMMARY OF ACCOUNT

CHARGES	
Amount of Inventory and Appraisement (or, if subsequent account, amount chargeable from prior account)	$_____
Receipts During Account Period(Schedule "A")	$_____
Gains on Sales (Schedule "B")	$_____
TOTAL CHARGES:	$_____
CREDITS	
Disbursements During Account period (Schedule "C")	$_____
Losses on Sales (Schedule "D")	$_____
Other credits (property distributed, homestead, or other	

property set apart) (Schedule "E")	$_____
Property on Hand (Schedule "F")	$_____
TOTAL CREDITS:	$_____

The summary should be supported by detailed schedules. The schedules of receipts and of disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and indicate the appraised value.

(Adopted 7/1/92)

15.11 PETITION TO ESTABLISH FACT OF DEATH

A petition to establish the fact of death, (terminate a joint tenancy or life estate) shall be verified and shall have attached as exhibits:

(A) A copy of any instrument relating to any interest in the property; and

(B) A copy of the death certificate.

Comment: There is no statutory provision for the determination by a court for attorney fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character should be made.

(Adopted 7/1/92)

15.12 CONSERVATORSHIPS — GENERAL PLANS

(A) Conservators of the person and conservators of the estate for all conservatorships shall file a General Plan with the court within 90 days from their appointment. At the time of the initial hearing the court will set a date for the matter to be placed on calendar for confirmation of the filing of the General Plan. No appearances are required if the plan has been filed within the prescribed time limits.

(B) The General Plan for a conservator of the person should describe the conservatee's social, physical and emotional circumstances and identify significant deficits which affect the conservatee's daily activities. There should also be a detailed explanation of the type of and level of services that will be provided which will satisfy the conservatee's basic and extraordinary personal needs.

(C) The General Plan for a conservator of the estate should describe the status of the conservatee's economic circumstances. It should identify any significant problem areas with regard to the maintenance of, possession of and handling of physical assets of the conservatee. It should further specify the manner and type of investment, sources of income and procedures for handling income and expenses. It should set forth any plans for sales of assets, changes of investments, or use of investment advisors or fiduciaries for handling the conservatee's assets. The plan should set forth the procedure which will be used to identify the funds necessary to satisfy the conservatee's basic and extraordinary financial needs.

(Adopted 1/1/07)

15.13 GUARDIANSHIPS — ANNUAL REPORTS

To ensure compliance with the annual reporting requirement of Probate Code §1513.2 and California Rules of Court, Rule 7.1003, a hearing date will be scheduled for no later than one month after the anniversary date of the date of every order appointing a person as a guardian. The clerk will mail to the guardian Judicial Council Form GC-251, Confidential Guardianship Status Report, at least one month before the hearing date. If the report is filed prior to the date for the hearing, no appearance will be necessary unless the court orders otherwise, and the next annual reporting date will be scheduled.

(Adopted 1/1/07)

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Contra Costa County
Probate Policy Manual

Effective January 1, 2010

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(Rev/Effective January 1, 2008)

RULE 6. PROBATE DEPARTMENT

A. PROBATE MATTERS (Revised 1/1/08)

Matters governed by the Probate Code, except compromises for minors and incompetents arising from matters not governed by the Probate Code, shall be set for hearing in the department(s) designated by the Presiding Judge. These departments will be known collectively as the Probate Department. The Probate Department will manage contested matters that require an evidentiary hearing until resolved or ready for trial, and will then set the trial date and department. (Rev./Eff. 1/1/08)

B. JUDICIAL COMMITMENTS

Probate matters also include all matters arising under the Lanterman-Petris-Short Act and any other judicial commitments, except Mentally Disordered Sex Offenders, and shall be heard in the Probate Department at time and date as established. (Rev./Eff. 1/1/2000)

C. TRUST FUND WITHDRAWALS

An application for an order authorizing withdrawals of funds on deposit for the benefit of a minor shall be made by completing a form provided by the clerk of the Court for this purpose. Said application shall be signed under penalty of perjury and shall set forth the status of the account, the purpose for which the funds are to be withdrawn, the need therefore, and the reasons why the parents or parent are unable to provide the needed funds. If the funds are held in a probate guardianship, or are blocked by other order of the probate court, the application for release of funds shall be submitted to the Probate Department. If the funds are blocked by order of another department, and there is no probate guardianship of the estate, the application shall be submitted to the presiding judge. (Rev./Eff. 1/1/2000)

D. PROBATE RULES

All petitions, motions, and orders to show cause regarding probate matters shall be set in the Probate Department, except motions regarding discovery, summary judgment and summary adjudication of issues. Except as expressly provided otherwise, these rules, including Rule 7, shall apply also to these matters set in the Probate Department. The policies and rules of the Probate Department are attached hereto as Appendix A. (Rev./Eff. 1/1/2000)

APPENDIX A
PROBATE POLICY MANUAL
(Revised/Effective January 1, 2008)

SECTION ONE
PROBATE COURT PROCEEDINGS

100. PROBATE COMMISSIONER

The probate calendar is heard by a Commissioner. If no objections are raised before or at the time a matter is called, counsel and parties are deemed to have stipulated to hearing and ruling by the Commissioner sitting as Judge Pro Tem. An oral or written announcement in the department hearing the matter will advise that this policy is in effect.

(Rev/Eff 1/1/08)

101. PROBATE CALENDAR

A. Probate calendars are arranged to facilitate efficient and effective resolution of matters before the court. It is the petitioner's responsibility to have a matter placed on the correct calendar. These arrangements may be changed from time to time.

B. Because of the limits on the number of matters which may be included on the calendar, parties who attempt to determine in advance the date on which a matter may be set do so at their own risk of the clerk determining that the matter cannot be calendared on that date. Parties who want exceptions to application of the calendar procedures as determined by the clerk may request the Probate Examiners to make accommodations to the calendaring, and may make verified application to the Probate Department.

(Rev/Eff 1/1/08)

102. CONTESTED MATTERS

A. The Probate Department will manage probate matters until they are ready for trial, and will then schedule the matter for an issues conference in the Probate Department, as otherwise described in Rule 5(k), and trial.

B. The Alternative Dispute Resolution Programs of the court are available for contested probate matters. The use of ADR, such as mediation, is encouraged by the court.

103. APPEARANCES

A. Appearances at the first hearing in uncontested matters are not normally required. Unless otherwise ordered, appearances are required in the following matters:

1. If a person has been cited or ordered to appear at a hearing, appearances by both the party and the party's attorney of record at that hearing are required. If the citation or order was requested by a party, then the attorney for the requesting party, or the requesting party if in pro. per., is also required to appear.

2. If the tentative ruling states "Appearances required" then appearances are required by the propondent of the matters on calendar, and all who have responded so the court can make appropriate case management orders (e.g. discovery deadlines, or trial setting). Attorneys of record may appear for their clients.

3. If a matter on calendar has been continued previously, appearances by the propondent and all who have responded are required at all subsequent hearings, so the court can make appropriate case management orders (e.g. discover deadlines, or trial setting). Attorneys of record may appear for their clients.

B. Failure to appear as required may result in sanctions pursuant to CCP §177.5.

104. VERIFICATIONS

A. The attorney who represents a ward or conservatee may verify pleadings filed on behalf of the ward or conservatee.

B. An attorney's verification on behalf of a client may be sufficient for pleading purposes, but unless the verification provides that the facts are within the personal knowledge of the attorney, then this does not provide the evidentiary support necessary for a ruling.

C. An attorney's declaration as to facts or attachments which were allegedly intended to be included in a statement previously verified by the attorney's client is ineffective. (Rev/Eff per CCP 2015 and Cal Rules of Ct 7.103 1/1/03)

105. SUBMISSION OF PROPOSED ORDER BEFORE DATE OF HEARING

Except in the case of confirmations of sales, orders must be submitted to the Probate Department at least three (3) Court days in advance of the scheduled hearing date. The hearing date shall be stated in the order. The proposed order shall be prepared on the assumption the petition will be granted, including requested fees. Orders submitted later will be reviewed and processed after the hearing and will generally be available the morning after the hearing.

106. TENTATIVE RULINGS

Tentative rulings or calendar notes are available prior to the calendar hearings. Counsel and/or parties are advised to review the tentative rulings prior to the hearing. The schedule and procedure for announcement of tentative rulings are established by the probate department and are subject to change.

107. CONTINUANCES TO CURE DEFECTIVE PLEADINGS OR PROCEDURES

A. The first hearing on a matter may be continued to enable petitioner to correct defective pleadings or procedures identified in the tentative ruling. The continuance can be made by telephone request to the clerk, or by the court on its own motion, even if no appearance or request for continuance is made.

B. After the first hearing, the matter may be dismissed unless petitioner shows good cause for a further continuance, by a filed declaration or an appearance at the hearing. Continuances following the first hearing may not be secured by requesting a continuance from the clerk.

C. All continuances will be for a minimum of three weeks.

D. A matter once dropped must be renoticed after it has been placed back on calendar. A matter dismissed must be refiled and renoticed. (Rev./Eff. 1/1/2001)

108. JUDICIAL COUNCIL FORMS

REPEALED (See Cal Rules of Ct 7.101) (Eff 1/1/03)

109. DISCRETION TO WAIVE RULES

The court for good cause may waive the application of these rules in an individual case.

110. FEES

The probate department may from time-to-time publish fee guidelines for the assistance of counsel and others.

111. RECORD TITLE

A. If a title of record for a decedent's interest in an asset is different than the decedent's interest is alleged to be in a petition determining characterization or disposition of the decedent's interest, the petition shall disclose to the court what the title of record is for the asset. For example, if a Spousal Property Petition is filed seeking determination that community property realty passed to the surviving spouse, and the title of record for the property to the property is held as "joint tenants with right of survivorship" then that fact shall be disclosed.

B. Community property held in joint tenancy title will be treated as community property unless there was a formal and express transmutation from community property.

112. COURT ORDERED FEES FOR FIDUCIARIES AND ATTORNEYS

A. No attorney for a guardian, guardian ad litem, minor, conservator, conservatee or personal representative shall request or

accept any compensation from the estate (whether or not subject to court supervision) of the ward, incapacitated person, conservatee or decedent's estate without prior court order. This does not limit payments from trusts or other parties who will not seek reimbursement from the estate. This requirement for prior court approval also include any attorney for any of the specified fiduciaries who is representing the fiduciary in any other civil action. For example, if a creditor files suit against a decedent's estate, and the personal representative hires separate counsel to defend the suit, prior court approval is required before payment of any fees to the separate counsel. The court is not bound by any attorney fee agreement in these situations which is executed without prior court approval. REPEALED IN PART (See Cal Rules of Ct 7.753, 7.754, 7.755) (Eff 1/1/03)

113. FACTUAL ALLEGATIONS

Declarations which merely recite or incorporate reference to code sections do not thereby provide an evidentiary basis for action by the court absent evidence that the declarant is an attorney or otherwise has sufficient expertise to express a credible opinion as to the operation of the code section. Absent such expertise, facts evidencing necessary compliance with a code section shall be stated in the pleadings.

114. GUARDIAN AD LITEM

A. A guardian ad litem must be an attorney or must be represented by an attorney.

B. A guardian ad litem may not waive or disclaim any substantive rights of the beneficiary without prior approval by the court.

115. SPECIAL NOTICE TO ATTORNEYS AND CLIENTS

A request for special notice by an attorney, absent express statement otherwise, does not constitute a waiver of the notices required to be sent to the attorney's client under Probate Code Section 1214. (Rev/Eff 1/1/03)

SECTION TWO
PETITIONS, ORDERS AND NOTICES

201. TITLES FOR PETITIONS AND ORDERS

REPEALED (see Cal Rules of Ct 7.102) (Eff 1/1/03)

202. MATERIAL TO BE INCLUDED IN PROBATE ORDERS

Formal orders, judgment and decrees shall be drawn so that their full effect may be determined without reference to the petition on which they are based. As necessary for this purpose, documents shall be attached to, and referenced in, the order, judgment or decree, instead of referring to the other document by reference. All probate orders, judgments or decrees shall set forth all matters actually passed on by the Court, giving the relief granted, the names of the persons affected, and the full legal description of any real property (including Assessor's Parcel Number), or the amounts of money affected.

203. WRITTEN RESPONSE

An objection or other written response to moving papers will be deemed a waiver of further notice as to those papers.

204. RESERVED. [REPEALED 1/1/03]

205. APPLICATIONS FOR EX PARTE ORDERS

A. Applications for ex parte orders must be accompanied by a separate order complete in itself. It is not sufficient for such an order to provide merely that the application has been granted, or that the sale of property set forth in the petition has been approved.

B. Since no testimony is taken in connection with ex parte petitions, the application must contain sufficient facts to justify granting the ex parte order. Orders dispensing with notice must be supported by a declaration. REPEALED IN PART (see Cal Rules of Ct 7.55 & Prob C 1202) (Eff 1/1/03)

206. PETITIONS FOR FAMILY ALLOWANCE

A. A petition for family allowance under Probate Code Section 6540 et seq. must include a detailed statement of proposed recipient's income and expenses.

B. A petition for family allowance, if made before the filing of the inventory, ordinarily may be presented ex parte. However, if

the petitioner is someone other than the executor or there is a dispute as evidenced by papers on file in the proceedings, or there is a request for special notice, then all other parties must be notified in person or by telephone at least 24 hours in advance of the time and place where the application for the ex parte order will be made. The petition must be presented by the attorney or unrepresented party requesting the ex parte order. Ordinarily, the order will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six (6) months. If the order will be opposed, call the Probate Department ahead of time to make a specific appointment with the Court.

C. If the application is made more than six (6) months after the personal representative has qualified, it shall be noticed and placed on the calendar.

D. Subsequent orders will be limited to a definite period, usually not to exceed twelve (12) months duration. It is the policy of this Court not to make orders for family allowance for an unlimited period.

207. BOND ON PETITIONS FOR AUTHORITY TO BORROW MONEY

Petitions for authority to borrow money shall set forth the amount of bond in force and the amount of loan proceeds eligible to be covered by bond. If no additional bond is required, or if bond is waived, that fact shall be alleged.

208. NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS

A. If, through inadvertence, the signed order, judgment or decree fails to state the ruling actually made by the Court, or through some scrivener's error portions of the order, judgment or decree are incorrect, the Court will make a nunc pro tunc, judgment or decree order correcting the mistake upon declaration detailing the defect.

B. A nunc pro tunc order, judgment or decree must take the form of a complete amended order, judgment or decree.

209. GENERAL NOTICE REQUIREMENTS

Counsel are reminded that the notice requirements in the Probate Code vary greatly. No set pattern may be discerned. The specific requirements of the Code (*i.e.,* posting, mailing, publication, personal service, etc.) must be checked for every petition filed.

210. ADDITIONAL NOTICE REQUIREMENTS

A. All interested parties: Notice must be given to any person whose interests may be affected by the hearing.

B. In a decedent's estate proceeding involving a testamentary trust, until a trustee is appointed by the court any notices regarding the trust must be given to all trust beneficiaries, subject to the limitations of Chapter 2 (commencing with Section 15800) of Part 3 of Division 9 of the Probate Code.

211. PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, except by Court order and new notice.

212. ORDERS, ETC., TO BE COMPLETE

A judgment, degree or order shall be complete in itself, with attachments as necessary to avoid incorporating other documents by reference.

213. ACCOUNTS AND REPORTS

A. Accountings submitted for court approval shall comply with Probate Code Section 1060 et. seq.

B. The report accompanying an accounting shall include a statement regarding the bond. This shall include the following:

1. The amount of the currently posted bond.

2. If no bond is posted, a statement of why no bond was required (*e.g.,* "At the time of appointment, there were no assets subject to disposition by the fiduciary" or "Bond was waived in the will."

3. If bond is required, the report shall state

a) the current value of all personal property subject to the petitioner's control;

b) the amount of the estimated annual income for the next year;

c) the fair market value, less encumbrances, of any real property which the fiduciary can sell without prior court order;

d) as to accounts for guardianships and conservatorships which have not terminated, a statement of the amount of any public benefits being received by or for the benefit of the ward or conservatee, including the identity of the person receiving the benefit.

214. PETITIONS TO SHOW WHO IS ENTITLED TO NOTICE

All petitions shall identify the names, addresses, and relationships of all persons entitled to notice.

215. IDENTITY OR WHEREABOUTS UNKNOWN

REPEALED (See Cal Rules of Ct 7.52) (Eff 1/1/03)

216. NOTICE REGARDING INTERESTS OF DECEASED PERSONS

REPEALED (See Cal Rules of Ct 7.51(e)) (Eff 1/1/03)

SECTION THREE
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

301. NOTICE RE SPECIAL LETTERS

Petitions for letters of special administration will not be granted without 24 hour (oral or written) notice to the surviving spouse or domestic partner as defined in Probate Code Section 1894, to the person nominated as executor, and to any other person whom the Court determines to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to Letters Testamentary or of Administration, but if it appears that a bona fide contest exists between these persons, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator, upon the filing of a proper petition therefor. (Eff 1/1/03)

302. PETITIONS FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY; FOR LETTERS OF ADMINISTRATION; OR FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED

A. Petitions for probate of Will must have a photocopy of the Will and all Codicils attached at the time of filing.

B. When a holographic instrument is offered for probate, a photocopy of the instrument must be accompanied by an exact typewritten copy of the instrument, reproducing the instrument line by line and showing any words crossed out. Where an instrument written in a foreign language is offered, it must be accompanied by a copy translated into English by a Court certified translator.

C. If a named beneficiary predeceased the decedent or did not survive the designated survival period, that fact must be stated in Attachment 8 of the Petition.

D. The personal representative is not required to include the date of birth or the California driver's license number on the Duties and Liabilities of Personal Representative form.

E. If Attachment 8 includes a spouse or any other person who is deceased as of the date of the petition, the petition should state that person's date of death. The court needs to know whether the person predeceased or survived the decedent.

303. NOTICE

A. The following persons are entitled to NOTICE:

1. Heirs of the Decedent. Whether or not a decedent died testate, the petition must contain the names and relationships of all decedent's heirs-at-law. An heir-at-law is any person who would be entitled to distribution of a part of the decedent's estate (including distribution by virtue of Probate Code Section 6402.5 if the decedent had a predeceased spouse) if the decedent died intestate;

2. Beneficiaries Named in the Will: This includes all named contingent beneficiaries who may be entitled to share in the estate, and also includes persons provided for in the Will but whose gifts have been revoked by a subsequent codicil;

3. Deceased Heir or Beneficiary REPEALED (See Cal Rules of Ct 7.51(e)) (Eff 1/1/03)

4. Trustee Nominee. Any nominated trustee of a trust created by the will;

5. Beneficiaries of Testamentary Trusts. The terms "beneficiaries named in the Will" and "named contingent beneficiaries" used above include beneficiaries named in testamentary trusts. It is not adequate merely to give notice to the trustee of a trust where beneficiaries or contingent beneficiaries are named in testamentary trusts;

6. Trustees of Inter-Vivos Trusts who will receive "pour over" gifts from decedent's estate;

7. Any non-petitioning Executor, including alternate executors named in the Will.

8. The California Attorney General, where there is a charitable trust involved (Probate Code Section 8111).

B. Method of Giving Various Notices

If the address of an heir or beneficiary is unknown, the Court requires a declaration stating specifically what efforts were made to locate such heir or legatee before the Court will dispense with notice or prescribe an alternate form of notice. See Probate Code Section 1212 and Code of Civil Procedure Section 413.30 as to what efforts are necessary. In general, these efforts shall include inquiry of relatives, friends, acquaintances, and employers and investigation of appropriate city and telephone directories, and the real and personal property index at the County Assessor's Office of the county of last known residence of the missing heir or beneficiary. REPEALED IN PART (see Cal Rules of Ct 7.51(d))

C. Notice by Mail—By Whom Given

If a Probate Code Section requires the clerk to "cause notice of the hearing to be mailed", the clerk fulfills this function by requiring counsel to do the mailing. Therefore, counsel is charged with this duty.

304. REQUIREMENTS OF PUBLICATION FOR NOTICE OF PETITION TO ADMINISTER ESTATE

A. The publication and mailing of Notice of Petition to Administer Estate under Probate Code Section 8120 is sufficient to include all instruments which are offered for probate filed with, and specifically referred to in the Petition for which notice is given. Any other Wills or Codicils not specifically mentioned in the Petition must be presented to the Court in an amended or second Petition and a new Notice of Petition to Administer Estate must be published and mailed. (Probate Code Sections 8110 and 8120.)

B. It is the responsibility of the petitioner to arrange for publication. The County Clerk does not have this responsibility.

305. COURT DISCRETION REGARDING BOND

Executors nominated to serve without bond may nevertheless be required to post such bond as the Court may require. If the nominated executor is a nonresident of California, the Court will require bond as though the will had not waived bond. If all beneficiaries or heirs waive bond, or if one of multiple personal representatives is a California resident, the Court will consider dispensing with the bond of a nonresident personal representative. FORMER SUBDIVISION B REPEALED IN PART (See Cal Rules of Ct 7.204) (Eff 1/1/03)

306. CONTINUANCE TO PERMIT FILING OF CONTEST

When a petition for the probate of a Will is called for hearing, if an interested person appears and orally objects and declares that he or she desires to file a written contest, the Court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will nevertheless proceed as though there were no contest.

307. MULTIPLE REPRESENTATIVES

When multiple personal representatives are appointed, the clerk will not issue letters to less than all of them or separately to any of them, unless the order specified otherwise.

SECTION FOUR
CREDITORS' CLAIMS

401. NATURE AND FORM OF CLAIMS

A. Claim vs. Expense of Administration

1. The Court will not approve "creditors claims" which represent obligations of the estate arising after the death of the decedent

(except reasonable funeral expense). Such expenses are properly expenses of administration, not creditor's claims, and may be included for approval in the account or report.

2. The Court will not approve "creditors claims" which are requests for reimbursement by the person who paid what may otherwise have been a creditor claim. These are claims for equitable subrogation, and may be included for approval in the account or report.

B. Form of Claims

Creditors' claims will be liberally construed in favor of their sufficiency.

402. CLAIMS FILED WITH CLERK AND MAILED TO PERSONAL REPRESENTATIVE

REPEALED (See Cal Rules of Ct 250; Prob C 9150) (Eff 1/1/03)

403. CLAIMS OF PERSONAL REPRESENTATIVES AND ATTORNEYS

A. A creditor's claim of the personal representative or attorney shall be noted as such. Such a claim must be processed as provided in Probate Code Section 9252 notwithstanding authority to act under the IAEA. Where there is more than one personal representative, a creditor's claim submitted by one of the personal representatives must be approved by the other(s) before submission to the Court for approval.

B. Unless a claim by a personal representative or attorney for the personal representative appears obviously reasonable, and any persons requesting special notice have waived the notice as to the claim, a hearing shall be held as set forth in Probate Code Section 9252(a) and notice thereof given to all persons entitled thereto, including all residuary beneficiaries, together with a copy of the claim, pursuant to Probate Code Section 1220.

404. FUNERAL CLAIMS

An unusually large claim for the decedent's funeral and/or interment is a questionable claim and may be set for hearing pursuant to the procedure set forth in Rule 403 above. Counsel is advised to review the case of *Estate of Malgor*, 77 CA2d 535, 176 P2d 66. Where appropriate, the personal representative shall either include facts in the petition or file a separate declaration to justify an unusually large expenditure for funeral expenses by reason of the value of the estate and/or the standard of living adopted by the decedent during his lifetime. Interest will be allowed on creditor's claims for funeral expenses only as made payable by Health and Safety Code Section 7101.

SECTION FIVE
SALES

PART I. SALES OF REAL PROPERTY NOT UNDER IAEA

501. RETURN OF PRIVATE SALE

A. Cash Deposit

Bids for the purchase of real property, when required to be returned to the Court for confirmation, must be accompanied by a minimum deposit of ten percent (10%) of the purchase price at time of hearing unless the buyers' committed loan proceeds exceed ninety percent (90%) of the purchase price, in which event the minimum deposit shall be the difference between the committed loan proceeds and the purchase price.

B. REPEALED IN PART (See Cal Rules of Ct 7.451) (Eff 1/1/03)

C. Second Deeds of Trust

The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

D. Application of Statutory Formula Re Overbid

The Court must consider not only whether the bid is arithmetically the highest, but also whether it is in the best interest of the estate. Counsel of the parties involved shall be prepared with factual information that will aid the Court in making this determination.

E. REPEALED IN PART (See Cal Rules of Ct 7.452) (Eff 1/1/03)

502. BROKER'S COMMISSIONS—GENERAL RULE

A. Improved Property

Upon the confirmation of sale of improved real property, the Court will ordinarily allow a broker's commission not to exceed six percent (6%). If a greater amount is requested, the petition to confirm sale must be accompanied by written declarations setting forth the advantages to the estate in allowing a larger percentage as commission.

B. Unimproved Property

Upon the confirmation of sale of unimproved real property, the Court will ordinarily allow a broker's commission not to exceed ten percent (10%). The Court will determine the kind of property which constitutes unimproved property in each case and may request counsel to file declarations setting forth relevant facts in the determination of what is "unimproved" real property.

C. Order Must Show Commission Allocation

The order confirming sale must show the total commissions allowed and any allocation agreed upon between the brokers.

503. BROKER'S COMMISSIONS IN OVERBID SITUATION

See Probate Code Section 10160 et seq. A chart demonstrating the division of the broker commission when estate property is sold subject to Court confirmation is attached hereto, marked "Attachment 1".

504. EXCLUSIVE LISTINGS FOR SALE OF PROPERTY (PROBATE CODE SECTION 10150(c))

REPEALED (see Cal Rules of Ct 7.453) (Eff 1/1/03)

505. CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS

A condominium is an interest in real property and must be sold as such, unless it is held as a limited partnership. A cooperative apartment is also real property and must be sold as such.

506. PURCHASE OF ESTATE PROPERTY BY PERSONAL REPRESENTATIVE OR HIS OR HER ATTORNEY

The purchase of estate property by the personal representative or by the personal representative's attorney is permitted only as set forth in Probate Code Sections 9881-9885. The Court will approve such a purchase with the consent of all residual beneficiaries by a writing filed with the Court.

PART II. SALES OF PERSONAL PROPERTY

507. TANGIBLE PERSONAL PROPERTY

A. Perishable or Depreciating Property

Perishable or depreciating property in an estate shall be disposed of promptly. The personal representative may be held accountable for the value of the property if there has been an unreasonable delay in disposing of such property. Such property may be sold without notice. See Sections 10252(c) and 10259(a)(1), Probate Code. If counsel wishes Court confirmation of such sales (10259(c)), counsel shall use JC form DE275.

B. Non-Perishable or Non-Depreciating Property

With the exceptions set forth in Probate Code Sections 10252(a), (b) and (d), non-perishable or non-depreciating personal property may be sold subject to Court confirmation at either public auction or at private sale, after giving notice as set forth in Probate Code Section 10250, et seq. The time for giving notice may be shortened in the discretion of the Court.

SECTION SIX
ACCOUNTS, FEES AND PETITION FOR DISTRIBUTION

601. NOTICE OF PETITION FOR DISTRIBUTION

At least 15 days before the hearing of the petition, notice of the hearing must be served upon each named beneficiary whose

interest is affected by the petition, to the heirs of the decedent in intestate estates. Also see Probate Code Section 1220. Notice shall also be given to: a) the trustee of any intervivos trust to which the estate pours over; b) to trust beneficiaries if required under Probate Code Section 1208; c) to the trustee of any testamentary trust; and d) to those next entitled to succeed to the trust corpus upon the termination of all present interests as of the time that notice is required to be given.

602. PROPERTY TO BE DISTRIBUTED MUST BE LISTED

A. The petition for distribution must list and describe in detail all property to be distributed, either in the body of the petition or in the prayer, or by a schedule in the accounting, and incorporated in the petition by reference. This includes a statement of the amount of cash on hand. Description by reference to the inventory is not acceptable. See also requirements in Probate Code Section 1064.

B. If an intestate decedent who survived his or her spouse leaves no issue, the applicability of Probate Code Section 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible. (Rev/Eff 1/1/03)

603. FORM OF ACCOUNTING

The general rules for accountings are now set forth in Probate Code Sections 1060 et seq.

604. WAIVER OF ACCOUNT

A. The waiver of account by the residuary beneficiaries alone is sufficient, even though there may be specific legatees and devisees, if the petition for distribution enumerates the specific bequests and devises, shows that there are sufficient assets to satisfy such bequests and devises, and prays that they be distributed. REPEALED IN PART (See Cal Rules of Ct 7.550) (Rev/Eff 1/1/03)

B. When property is being distributed in a testamentary trust, an account may be waived by the trustee and all beneficiaries of the trust. The beneficiaries must all be ascertained, adult and competent, or represented by a guardian, conservator or guardian ad litem, who must execute the waiver.

605. STATUTORY FEES AND ALLOWABLE COSTS

REPEALED (see Cal Rules of Ct 7.705) (Eff 1/1/03)

606. INHERITANCE BY SURVIVING SPOUSE

Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to section 13502 must be supported by a timely written election expressing indicating a consideration of the alternative procedures available pursuant to Section 13650. Written elections pursuant to Probate Code Section 13502 shall contain an express acknowledgment that the inclusion of property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney fees.

607. ALLOWANCE ON ACCOUNT OF FEES

REPEALED. (See Cal Rules of Ct 7.701, 7.703 and 7.704) (Eff 1/1/03)

608. THE ORDER

A. The distribution of property must be separately stated in detail, listing non-cash assets to be distributed as described in the Inventory and Appraisal, as well as the amount of cash to be distributed, under the name of each beneficiary. The order must be complete in itself and the total estate distributed must agree with property on hand as shown on Schedule F of the Summary of Account. Description by reference to the inventory is not acceptable.

B. For real property to be distributed, the order must include the legal description, the street address, if any, and the assessor's parcel number.

C. For orders establishing testamentary trusts, see Rule Cal Rules of Ct 7.650.

(Rev/Eff 1/1/08)

609. SEGREGATING TRUST INCOME AND PRINCIPAL

When any part of the estate is to be distributed to a trustee, and the accumulated income is to be paid by the trustee to the trust

beneficiaries, the order shall allocate receipts and disbursements between principal and income.

610. CREDITOR'S CLAIMS

A. The Petition for Final Distribution must show that all of decedent's creditors received a Notice to Creditors (Judicial Council Form DE-157) at least 75 days prior to the hearing, or were paid or that there were no known creditors of decedent. (Probate Code Section 10900) (Rev./Eff. 1/1/2001)

B. Unless accountings are waived, if any funeral expense or debt of the decedent was paid more than four months after letters with general powers issued, the petition shall show why the claim was not barred or the personal representative may be surcharged with interest for the payment. (Rev./Eff. 1/1/2001)

C. Unless accounts are waived, if a decedent's debt, or funeral expense, was paid from the estate without the filing of a creditor claim, the petition shall address the five elements (including timeliness of payment) of Probate Code Section 11005. (Rev./Eff. 1/1/2001)

611. FEDERAL ESTATE TAXES

A. When proration of federal estate taxes is required by Probate Code Section 20110 et seq., the petition for distribution shall include a schedule showing the computation of the proration.

B. An estate is not ready for final distribution until the estate tax returns have been filed, and the tax paid, unless no estate tax return is required to be filed. If an estate tax return is required, the order for final distribution shall include a provision that there will be no final discharge until final resolution of the estate tax liability (e.g. receipt of closing letter).

(Amended 1/1/2008)

612. SPECIFICALLY DEVISED PROPERTY

As to expenses allocable to specifically devised property (e.g., taxes, maintenance, repairs, insurance, debt servicing) see *Estate of McSweeney* (1954) 123 Cal.App.2d 787.) For apportionment of income and expenses, see Probate Code Sections 12002, 9650, and 1063.

613. DISTRIBUTION TO MINORS

Where the court has discretion, funds for minors or incompetent persons without a guardian or conservator of the estate will be required to be placed in a blocked, federally insured account. The Court does not favor transfer under the California Uniform Transfers to Minors Act unless the Will so provides.

614. PRELIMINARY DISTRIBUTION

A. In the event of a preliminary distribution made before the time for filing creditor's claims has expired, a bond MUST be required of the distributees (Probate Code Section 11622). After the time for filing claims has expired, the Court will usually require a distributee's bond unless the Inventory and Appraisal has been filed and the Petition sets forth sufficient facts showing that the distribution may be made without loss to creditors or injury to the estate or any interested person.

B. If the petition requests that no bond be required of the distributees, a clear and concise statement showing why bond should not be required must be included in the petition.

615. PROCEDURE TO BE FOLLOWED BY A PERSONAL REPRESENTATIVE IN ACTIONS FOR DAMAGES FOLLOWING WRONGFUL DEATH OF DECEDENT OR OTHER ACTIONS THAT SURVIVE THE DEATH OF DECEDENT

A. Special letters may be the proper vehicle for such actions. In appropriate circumstances, the Court may appoint the Special Administrator for a limited purpose with a termination date specified in the order and may require an appearance at a scheduled hearing date for a status report and to continue the appointment of the Special Administrator beyond that date.

B. If a personal representative collects damages arising out of the physical injury of the decedent or covering funeral expenses and costs of last illness, he or she shall hold such money in his or her representative capacity as property of the estate.

C. Damages for wrongful death are held by the personal; representative as a representative of the statutory beneficiaries and are not part of the estate. (*Estate of Waits* (1944) 23 Cal.2d 676.) The disposition of such damages for wrongful death and the amount of attorney's fees and costs shall be determined by the Court on a petition pursuant to Probate Code Section 9835.

D. In addition to the usual notices given on hearing of such a petition, under Probate Code Section 9835, notice shall be served on the heirs at law in the same manner as if each had filed a request for special notice. (See also Code of Civil Procedure Sections 377.10 et seq.)

616. GRANT OF ADDITIONAL POWERS TO TESTAMENTARY TRUSTEE

Notice must be given under Probate Code Section 17203 where the Petition for Distribution requests the Court to grant a trustee additional powers not conferred by the Will. The Court may require that a guardian ad litem be appointed for persons unascertained or not in being. (Probate Code Section 15405)

617. APPLICATION FOR FINAL DISCHARGE

All Ex Parte Petitions for Final Discharge (form DE-295) shall be submitted with a copy of the order of final distribution, copies of receipts from distributees, and the ex parte filing fee as fixed by the Clerk of the Superior Court. If the order requires distribution of funds to a blocked account, the request for final discharge shall be accompanied by a completed receipt (form MC-396). If the order distributes real property, the copy of the order submitted with the request for final discharge shall show that the order has been recorded in the appropriate county. If the order provided for a withhold greater than $500.00 there shall be included a schedule of disbursements for the withhold.

SECTION SEVEN
INVENTORY AND APPRAISAL

701. PREPARATION OF INVENTORY AND APPRAISAL

Provide complete descriptions of each asset in the estate. (See Probate Code Section 8850). The legal description as well as the street address (or a notation that the property is "unimproved") shall be shown for each parcel of real property. Promissory notes shall be described by showing the maker, payee, original face amount, present balance, interest rate, and a description of the security, if any. See I. California Decedent Estate Administration (CEB Rev 1996, Chapter 11, Section 1122); See also Legal Secretary's Handbook (California), Volume 2 (1989 Edition) published by the Rutter Group, form 14-28. Cal. Prac. Guide: Probate (The Rutter Group) Section 6:87 et seq.

702. WAIVER OF APPRAISAL BY PROBATE REFEREE

A. The Court does not favor the waiver of the Probate Referee's appraisal under Probate Code Section 8903 in the absence of exceptional circumstances.

B. The court may allow deferral of the Probate Referee's appraisal on a showing that (1) all beneficiaries have waived the Probate Referee's Appraisal and (2) that fees and commissions for the personal representative and attorney, have been waived. If these conditions remain when the estate is ready for final distribution, the court may then waive the Probate Referee's appraisal.

SECTION EIGHT
GUARDIANSHIPS AND CONSERVATORSHIPS

Part I. Guardianships: Commencing with Rule 801
Part II. Conservatorships: Commencing with Rule 811
Part III. Rules common to Guardianships and Conservatorships: Commencing with Rule 819

PART I. GUARDIANSHIPS

800-801. INTENTIONALLY OMITTED

802. TEMPORARY GUARDIANSHIPS

The Court will not order a change of custody under a temporary guardianship unless doing so appears necessary for the protection of the minor. Minimum notice to parents will be required unless justified by a supporting declaration.

803. CONSULTATION WITH OTHER DEPARTMENTS RE CUSTODY OR DEPENDENCY PROCEEDINGS

Where a petition for guardianship of the person of a minor is pending and where it appears to the Court that a custody or dependency proceeding concerning the same minor is pending in any other department of the Superior Court, a consultation will be had between the judicial officers of the department in which such proceeding or writ is pending, and a determination made as to whether or not the matter should be heard separately or a consolidation arranged.

804. GUARDIANSHIPS FOR DEPENDENT CHILDREN

A guardianship for dependent minor children must be established in Juvenile Court under Welfare and Institutions Code Sections 366.25(e) or 366.26(d). Juvenile Court retains jurisdiction to modify, revoke or terminate such guardianships. See Welfare and Institutions Code Sections 366.3 and 366.4.

805. RESTRICTION ON PARENTAL USE OF MINOR'S ESTATE

As there is a statutory liability upon the parents to support their children, where one or both parents are living, the Court will not permit guardianship funds to be used for the minor's ordinary support and maintenance except upon a showing of the parents' financial inability or other circumstances which would justify the Court in departing from this rule in the best interest of the minor.

806. FINAL ACCOUNT OF GUARDIAN

A. Appearance by Ward

An appearance by the ward at the hearing on the guardian's final account and petition will be required unless either:

1. Proof of service is on file verifying that a copy of the final account and petition, and notice of hearing thereon, has been served upon the ward not less than fifteen (15) days prior to the hearing, (Probate Code Section 1460), or

2. The ward's written acknowledgment of receipt and approval of the petition and final account is on file.

B. Waiver of Account by Ward

The Court does not favor the waiving by the ward of a guardian's final account when the ward has reached majority, and normally the Court will not approve a petition when the final account is waived, unless the ward is present in Court at the time of the hearing.

C. Discharge of Guardian

1. A guardianship of the person and estate will terminate pursuant to Probate Code Sections 1600 and 1601.

2. Discharge of the guardian will not occur until the expiration of one (1) year from the date the minor attained the age of eighteen (18) years. See Probate Code Section 2627.

3. In the case of a minor for whom a conservatorship will be required, a petition for appointment of a conservator may be filed during the proposed conservatee's minority in order to make the appointment of a conservator effective immediately upon the minor's attaining the age of eighteen (18) years (Probate Code Section 1820(b)).

807-810. INTENTIONALLY OMITTED

PART II. CONSERVATORSHIPS

811. APPOINTMENT OF CONSERVATOR

A. Although Probate Code Section 2106 gives the Court discretion to appoint one conservator for several conservatees, the Court will generally not grant a petition joining more than one conservatee in a single proceeding, except husband and wife or domestic partners as defined in Probate Code Section 1894. (Rev/Eff 1/1/03)

B. The matter shall be set for hearing generally not sooner than 45 days after the filing date to allow time for the Court Investigator's Report (Probate Code Section 1894).

C. The Handbook as required by Probate Code Section 1835 is available for purchase from the Clerk's Office.

812. APPOINTMENT OF TEMPORARY CONSERVATORS

Minimum notice to the conservatee and conservatee's spouse, if any, will be required unless a supporting declaration justifies waiver. (Rev/Eff 1/1/03)

813. SPECIFIC MEDICAL TREATMENT AND PLACEMENT

A. A conservator of the person generally has authority to fix the residence of, and place the conservatee in, any facility in this

state, including a facility which restricts egress by the conservatee. This rule is subject to limitations which may be placed on the conservator by statute or court order. These limitations include, but are not limited to, the following:

1. The placement must be the least restrictive appropriate setting which is available and necessary to meet the conservatee's needs. Ordinarily, a conservatee should be allowed to remain in the conservatee's residence in which the conservatee resided prior to the establishment of the conservatorship so long as this is feasible.

2. A conservatee with dementia may be placed in a facility specifically described in Probate Code Section 2356.5(b) only with authorization as provided in that section. The court will not make an order for placement under Probate Code Section 2356.5(b) absent a showing that the specifically proposed placement is described in Probate Code Section 2356.5(b). A petition for a court order regarding placements in a facility not specifically described in Probate Code Section 2356.5(b) will be deemed a petition for instructions pursuant to Probate Code Section 2359.

3. Placement in a mental health treatment facility as defined in Probate Code Section 2356(a) requires an LPS conservatorship.

B. Psychotropic medication in conservatorships under Probate Code is generally governed by the same provisions as other medical treatment. If the conservatee has been adjudicated to lack the capacity to consent to medical treatment generally, or to the application of psychotropic medication, then the conservator of the person generally has authority to consent to the medication. However, if the medication as described in Probate Code Section 2356.5 is to be given to a conservatee for treatment of dementia who lacks the capacity to give informed consent to that medication, then the conservator of the person may authorize the medication only with prior authorization as provided by that Section.

814. TERMINATION

Conservatorship may be terminated pursuant to Probate Code Sections 1860 et seq., and Section 2626. The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code Section 7357, or other provision of law, does not, of itself, terminate a conservatorship. Conservatorships terminate by operation of law upon the death of the conservatee. Termination does not cause the court to lose jurisdiction as to some issues, such as approval of accountings or awarding fees (Prob C §2630 et seq.)

815. ACCOUNTS OF CONSERVATOR

Probate Code Section 2621 prescribes the requirement for giving notice of hearing on the account. See, also, Probate Code Section 2620 and Sections 2630 et. seq., regarding provisions pertaining to accounts on termination of conservatorships.

816. SALES OF PERSONAL RESIDENCE

A Petition for Confirmation of Sale of the conservatee's present or former residence shall include allegations showing that the requirements of Probate Code Section 2540(b) have been met.

817-818. INTENTIONALLY OMITTED

PART III. RULES COMMON TO GUARDIANSHIPS AND CONSERVATORSHIPS

819. WARNING ON ORDER (deleted) (Eff 1/1/03)

820. COPIES FOR COURT INVESTIGATOR

When an account, report or petition is filed as to which an investigation by the Probate Court Investigator is required, an extra copy of that pleading along with any other pleadings filed in relation thereto shall be given to the legal process clerk at the time of filing, to be routed to the Court Investigator. This includes (a) any petition for appointment of guardian or conservator, (b) any petition for appointment of temporary guardian or conservator, (c) any accounting except when the guardianship or conservatorship has terminated; and, (d) any petition for medical consent authority. (New/Eff. 1/1/2001)

821. FURNISHING COPIES OF PLEADINGS TO COURT INVESTIGATOR

In any matter requiring a report by the Court Investigator, copies of all related pleadings, including the petition, accounting, orders, letters, inventory and appraisals, etc., shall be furnished to the Court Investigator at the time of filing by leaving copies at the Clerk's Office or by mailing or delivering copies to the Court Investigator's office.

822. TEMPORARY GUARDIAN OR CONSERVATOR

Upon the filing of a petition, a temporary guardian or conservator of the person or estate, or both, may be appointed under

Probate Code Section 2250 et seq. A separate petition for the appointment of a general guardian or conservator must be presented to the Court to be filed before a petition for a temporary guardian or conservator will be considered.

823. INSTRUCTIONS REGARDING GENERAL DUTIES AND CONFLICTS OF GUARDIAN OR CONSERVATOR

Before Letters are issued, each guardian or conservator must complete, sign and file a form provided by the Judicial Council. The form shall set forth the guardian or conservator's duties as a fiduciary and outline the responsibilities as an officer of the Court. Social Security Number, driver's license number and date of birth do not need to be supplied on the form.

824. BONDS OF CONSERVATORS AND GUARDIANS

Bond for an individual conservator or guardian will generally not be waived. The Court generally will not require a bond for amounts in blocked accounts. (See Probate Code Section 2328).

825. ACCOUNTS

A. The first account shall be filed on or before the first anniversary date of the order appointing the guardian or conservator; and subsequent accounts shall be filed at least biennially thereafter. The first account shall be for a minimum period of nine months from date of appointment of the general conservator and shall also include any period of temporary appointment of the person as conservator or guardian.

B. Where there are multiple wards or conservatees joined in a single guardianship or conservatorship proceeding, a separate accounting shall be provided for each of them.

C. The ending date of an account, except an account ending upon the death of a conservatee, shall not be more than three months prior to the date it is filed with the court. Filing an accounting late is not good cause for preventing the court and court investigators from reviewing the current information regarding the matter. (Rev/Eff 1/1/03)

826. FIDUCIARY'S COMPENSATION, ATTORNEY'S FEES AND COSTS

Although Probate Code Section 2640 et seq. allows the guardian or conservator and the attorney to file a separate petition to the Court to determine compensation for the fiduciary and attorney's fees, the Court prefers to determine the amount of fees at the time a guardian's or conservator's account is approved. The Petition shall specify the services rendered and the compensation and fees requested. A petition prior to the accounting may be filed to determine compensation so long as the Inventory and Appraisal has been filed showing sufficient assets to pay the requested compensation. Counsel and/or the guardian or conservator may not charge fees or costs to the estate for bringing such early petition, and good cause for allowing fees before the accounting must be shown.

827. INDEPENDENT EXERCISE OF POWERS

A. The Court will ordinarily not grant the powers enumerated in Probate Code Section 2591. Because of the broad scope of this section, the Court requires a detailed declaration as to the necessity for the specific independent power desired.

B. When independent powers are requested and granted, it is not sufficient to incorporate by reference the statute or its subsections. The power must be described in sufficient detail so that any person reading the document can determine the nature of the power requested or granted. Quoting the full text of the subsection enumerating the power under Probate Code Section 2591 is the preferred method of complying with this rule. Even when granting the requested powers, the Court will normally require confirmation of sale of real property and prior court approval of attorney's fees.

828. INVESTMENTS BY GUARDIAN OR CONSERVATOR (PROBATE CODE SECTION 2570 ET SEQ.)

A. Investment in real estate, either by purchase or encumbrance, will not be authorized unless supported by an appraisal by the Probate Referee regularly appointed in the guardianship or conservatorship proceeding.

B. Purchase of life insurance on the minor ward's life will not be authorized.

C. If a request for special notice has not been filed, a petition for authority to invest may be heard ex parte provided the Court makes an order that notice be dispensed with. A declaration justifying the dispensing with notice shall accompany or be incorporated in the petition.

829. ACCOUNT STATEMENTS WITH ACCOUNTINGS (New/Eff. 1/1/01)

Any account statement submitted pursuant to Probate Code Section 2620 which are required by that section to be confidential shall be filed as a separate document complying with California Rule of Court 201, including a verified statement by the petitioner identifying the document. The caption of the document shall include the word "CONFIDENTIAL" in all capital letters. (Rev/Eff 1/1/03)

SECTION NINE
TRUSTS

901. COMPENSATION, ATTORNEY'S FEES AND COSTS

If a petition is submitted for approval of prospective or previously paid Trustee's compensation, fees for their attorneys and allowable costs, it shall be governed by the criteria set forth in Rule 826 supra. (See Probate Code Sections 16243 and 16247)

SECTION TEN
PROTECTIVE PROCEEDINGS

1001. PROCEEDING FOR SPOUSAL PROPERTY TRANSACTION

As to petitions pursuant to Section 3100 et seq.:

A. The petition must be supported by a declaration of a licensed physician or licensed psychologist within the scope of his or her licensure as to the capacity of the nonpetitioning spouse (Section 810 et seq.).

B. Counsel will be appointed for the non-petitioning spouse if the petition proposes a substantial transfer to the petitioner.

C. When the petitioner is predicated upon the non-petitioning spouse's qualification for Medi-Cal benefits, notice shall also be given to the Director of the California Department of Health Services.

D. In petitions to transfer assets, related to Medi-Cal eligibility, the petitioner shall provide the court with schedules showing such calculations as would be required in an administrative hearing to the extent that the Community Spouse Resource Allowance or the Minimum Monthly Maintenance Needs Allowance would be in issue. The court will not make orders modifying the Community Spouse Resource Allowance nor the Minimum Maintenance Monthly Needs Allowance but may make findings as to the proper amounts as needed to support the order.

E. The court will not issue general support orders in petitions under Sections 3100 et seq.

1002. ESTABLISHMENT OF A TRUST

A. Absent special circumstances, whenever a trust is to be established by court order for the benefit of an incapacitated person, the trust shall contain the following provisions: Protector of Trustor: Regardless of any other provision of the trust, in administering the trust, the trustee shall be subject to the same terms and conditions as a conservator of the estate during the lifetime of the trustor, including but not limited to:

1. Posting bond for assets and income of the trust.

2. Accounting to the court (to be filed in this proceeding).

3. Investment limitations.

4. Gifts, hypothecation or sales of assets (including returns for confirmation and overbids).

5. Providing for the trustor's needs without regard for the interest of the remainder beneficiaries.

6. Obtaining prior court approval for payment of fees to attorneys, conservators and trustees.

7. Prior court approval of any change of trustee during the trustor's lifetime.

B. The formal order shall provide that the trustee may not receive assets or otherwise act until filing of a bond in the amount set by court.

ATTACHMENT 1
THE ABC'S OF DIVIDING THE COMMISSION PIE IN PROBATE SALES
(Rev./Eff. 1/1/2000)

Lloyd W. Homer, Esq.
Campbell

The following chart demonstrates the division of the broker commission when estate property is sold subject to court confirmation pursuant to Probate Code §§10160-10167. If the property subject to sale is being sold pursuant to the personal representative's authority under independent administration, the chart is inapplicable and Probate Code §§10400-10600 must be consulted. For sales subject to court confirmation, the personal representative also needs to consult Probate Code §§10250-10264 (personal property) and §§10300-10316 (real property) regarding the manner of conducting the sale.

Who are A, B and C?

A = The estate (Seller). If the estate has a broker, that will be broker A.

B = The bidder (Buyer). If the bidder has a broker, that will be broker B.

C = The successful overbidder (New Buyer). If C has a broker, that will be broker C.

FACTS: Original bid $100,000

Where there is an overbid, the increased bid is $110,000

Commission allowed by the Court is 6%

	A SELLER	B BIDDER	C OVERBIDDER	PROBATE CODE SECTION*	COMMISSION TO BROKER
1.	No Broker	No Broker	No Overbid	None	None
2.	No Broker	No Broker	No Broker	None	None
3.	No Broker	No Broker	No Overbid	10163	C receives $5,000 (not $6,600 because of the limitation of Section 10162
4.	No Broker	Broker	No Overbid	10162.3	B receives $6,000
5.	No Broker	Broker	No Broker	10164	B receives $6,000
6.	No Broker	Broker	No Overbid	10165(c)(2)	B receives $3,000
				10165(b)	C receives $3,600 ($3,000 on the original bid and $600 on the increased bid.
7.	Broker	No Broker	No Overbid	10162.5	A receives $6,000
8.	Broker	Broker	No Overbid	10162.7	A receives $3,000 B receives $3,000 (or as A and B have agreed)
9.	Broker	No Broker	No Broker	10162.5	A receives $6,000
10.	Broker	No Broker	Broker	10162.5(c)(1)	A receives $3,000
				10165(b)	C receives $3,600 ($3,000 on the original bid and

					$600 on the increased bid)
11.	Broker	Broker	No Broker	10164(c)	A receives $3,000 B receives $3,000 (or as A and B have agreed)
12.	Broker	Broker	Broker	10165(c)(3)	A receives $1,500 B receives $1,500 (or as A and B have agreed
				10165	C receives $3,600 ($3,000 on the original bid and $600 on the increased bid)

NOTE: The following documents are provided as referenced by the proposed local rules, but are not intended to be adopted as local rules. These documents are included for informational purposes only. (Eff. 1/1/2000)

ATTACHMENT 2
PROBATE DEPARTMENT FEES AND COSTS GUIDELINES
(Eff. 7/15/04; Rev. 1/1/10)

The Probate Department has established these general guidelines for allowable fees and costs in probate, trust, guardianship and conservatorship proceedings.

FEES

A. Attorney's Rates: The standard maximum attorney's fees for guardianships, conservatorships and extraordinary probate services is $250.00 per hour. The Court will consider higher hourly rates upon a showing of good cause. The standard maximum attorney's legal assistant rate is $125.00 per hour.

B. Fiduciary Rates: The standard maximum hourly rate allowed for professional fiduciaries is $100.00 per hour.

C. Non-Professional Fiduciary Rates: The standard maximum hourly rate for other fiduciaries is $30.00 per hour.

D. Higher Rates: Determination of requests for higher rates will be based on all relevant factors presented, including special expertise applicable to the services provided, circumstances of the service, and relationship to the decedent, or other parties.

E. Travel Time: The Court will not generally allow attorney fees for more than one hour travel time, total, per appearance.

F. Format: Fee requests, except those calculated using a percentage of the assets, shall include a narrative statement of the nature of the services performed, including the number of hours and the rates requested. In addition, the petitioner may include a detailed statement, showing on a daily basis the total hours spent, rates requested, and description of activities. The Court may require the petitioner to provide a detailed statement, to the best of the petitioner's ability, before ruling on the fee request.

G. Guardianships, Conservatorships and Trusts: The Court will approve, without a supporting declaration, annual fees of one percent (1%) of the present fair market value of all estate personal property and the estimated fair market value of estate real property for estate related purposes. Notwithstanding, the foregoing, the Court will generally approve a minimum annual fiduciary fee of $1000.00 without requiring a declaration.

COSTS AND EXPENSES

A. Reasonable court costs will be allowed.

B. The Court will not allow reimbursement, or approve expenditures, for expenses incurred for ordinary business operations associated with services compensated by:

(1) statutory compensation or;

(2) professional fees (e.g., attorneys, professional fiduciaries and corporate fiduciaries). Unusual amounts of such expenses which are disproportionately large in consideration of the fee amount may be approved.

These expenses include, without limitation, copying, postage, telephone calls, cellular telephone charges, facsimile transmissions, e-mail or Internet access. Upon a proper and detailed showing, reimbursement for travel and other expenses may be allowed. (Eff. 7/1/04)

(New/Eff. 7/1/2004)

PROBATE DEPARTMENT OPERATIONS
(Rev/Effective January 1, 2008)

CALENDARS

Certain probate matters shall be set initially in Department 60. These calendars are as follows:

Thursday at 11:10 a.m.—all probate cases (e.g. LPS Conservatorships) governed by the Welfare & Institutions Code.

Thursday at 11:00 a.m.—all other matter involving County Counsel or the Public Defender.

All other probate matters shall be set initially in Department 61. The currently scheduled regular calendars are as follows:

Wednesdays and Fridays at 9:00 a.m. for all other conservatorships.

Wednesdays and Fridays at 9:30 a.m. for guardianships.

Mondays, Tuesdays and Thursdays at 9:00 a.m.—all other probate matters.

EX PARTE APPLICATIONS

All requests for ex parte orders shall be submitted to the Probate Examiners for review between 1:30 p.m. and 3:00 p.m. Monday through Friday.

TENTATIVE RULINGS

Tentative rulings are generally available three (3) court days prior to the hearing on the Tentative Rulings Website at http://tr.cc-courts.org. If the website is down, or for some reason cannot be accessed, the number to call between 1:30 p.m. and 3:00 p.m. on the day before the hearing, is (925) 957-5781.

Tentative rulings are not posted for matters on the Thursday, 11:10 a.m. calendars due to confidentiality requirements. Parties to such matters and their attorneys may receive the tentative rulings for their specific matters by calling the probate staff at (925) 957-5781 the day prior to the ruling.

LOCATIONS

725 Court Street, Martinez

Department 60 — Room 102, 1st Floor

Department 61 — Room 212, 2nd Floor

Probate Examiners — Room 210

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Source: Estate Planning/California Local Probate Rules/Del Norte County Probate Policy Manual

Del Norte County
Probate Policy Manual

Effective October 15, 1990

RULE VI—PROBATE RULES

SECTION 1 PROBATE CALENDAR

In noticing petition for probate of wills and other matters where publication is required, counsel shall allow sufficient time to file the affidavit of publication prior to the hearing.

SECTION 2 APPEARANCE OF COUNSEL

All verified petitions in probate matters shall be deemed submitted, without the necessity of appearance by counsel or the petitioner, except petitions for confirmation of sale of real property or personal property (when in excess of $100.00), applications for letters of guardianship or conservatorship where no certificate has been filed under Probate Code §1461, petitions for probate of will unsupported by affidavits of witnesses, and other matters necessitating an appearance or testimony. Before denying any petition where there is no appearance under these rules, the Court shall continue the matters one week to give counsel an opportunity to appear.

SECTION 3 DEPOSIT OF ORDER WITH CLERK

A proposed form of order shall be deposited with the Clerk at the time any verified petition in probate is filed, except in the case of sales of real property or personal property (when in excess of $100.00). Proposed orders which have not been so deposited shall be handed to the Judge at or after the time for consideration by the Court.

SECTION 4 EXTRAORDINARY FEES

Petitions for extraordinary fees shall not be considered unless both the caption and prayer thereof contain a reference to such extraordinary fees. No appearance shall be required in support of applications for extraordinary fees either by the attorney or personal representative if the petition contains a complete detailed statement of the facts and the work done upon which such application is based, but hearings on such matters may be had if requested by counsel or any interested person. In allowing such fees the Court shall consider the difficulty of the tasks performed, the reasonable value of time expended and the amount of the estate accounted for.

SECTION 5 PROBATE ACCOUNT CALENDAR

A probate account calendar shall be called on the second Friday of June and December of each year. All probate matters wherein accountings are required by law and said accounting or status report has not been filed within one year shall be set at that time.

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El Dorado County
Probate Rules

Effective January 1, 2010

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10.10.00 PROBATE PROCEDURES

(Effective January 1, 1994)

10.10.01 PROBATE CALENDAR

A. Probate Calendar.

The probate calendar shall be heard pursuant to the scheduling established by the Superior Court in the department assigned by the Presiding Judge.

B. Tentative Ruling System—Department One

(1) The Superior Court will operate a tentative ruling system for matters set on the regularly scheduled Probate Calendar. Most matters on this calendar will not be heard on the Probate Calendar date. Only those matters where the tentative rulings mandate appearances will there be oral argument. These will generally be limited to the matters specified in Local Rule 10.10.04. Oral argument in all other matters will not be permitted, unless a hearing is requested at the time the matter is scheduled on the Probate Calendar.

(2) Uncontested matters seeking approval of petitions, reports and accounts will have a ruling granting, denying or a qualified grant or denial. No appearances will be required on these matters and no hearing will be held, if a proposed order is submitted prior to hearing, unless the Court mandates the appearances are required in the ruling.

(3) Nothing in this rule is to be construed as prohibiting counsel from attending the hearing of the Probate Calendar for any reason, even if their appearance is not required.

(4) The Tentative Ruling and written rationale can be obtained via the Internet on the El Dorado county Superior Court web page at http://eldocourtweb.eldoradocourt.org on the court day preceding the date the matter is set on the Probate Calendar. The written rationale, if appropriate, can be viewed on the web page by clicking on the "Tentative Rulings" link and you will find the Tentative Rulings listed by Department and Calendar date. Simply click on the Tentative Rulings for the assigned Department and then click on the date you wish to view.

(5) The Tentative Ruling and written rationale, if appropriate, will also be posted outside the assigned department for viewing on the court day preceding the date the matter is set on the Probate Calendar.

(6) In matters where no oral argument hearing is set in the Tentative Ruling, the Tentative Ruling will become the Order of the Court at the time and date the matter is set on the Probate Calendar, unless oral argument has been requested during the scheduled time for the Probate Calendar and that request was granted.

(7) There will be no continuances of matters on the Probate Calendar, nor will a matter be dropped from the Probate Calendar at the request of a party, once a tentative ruling has been released.

(8) No copies of tentative rulings will be provided to counsel, either in FAX form or in writing.

(9) If the Court raises questions in the Tentative Ruling and counsel requires clarification of what is required to resolve those questions, then counsel may contact the Court's Judicial Staff Attorney.

(Effective January 1, 1994; amended July 1, 2000)

10.10.02 FILING OBJECTIONS—CONTINUANCES

Objections to a matter on the probate calendar shall be asserted at the hearing or filed and served by mail on the attorney for the petitioner five days prior to the hearing. If the petitioning party has not been timely served with the objections and is not present at the hearing or requests a continuance, the matter will be continued for one week only. Written objections, if not already filed and served, shall then be filed and served two days prior to the continued hearing date. (Effective January 1, 1994)

10.10.03 CONTINUANCES—TELEPHONE REQUESTS

Unless formal objections have been filed, the petitioning party may request a continuance by telephone to the Court's Calendar Clerk—Placerville, (916) 621-6439; South Lake Tahoe, (916) 573-3079 prior to 3:00 p.m. the day before the hearing. A confirming letter to the Court shall be in the file prior to the hearing. (Effective January 1, 1994)

10.10.04 MATTERS REQUIRING APPEARANCES

The following probate matters require appearance of counsel or parties at the hearing, unless notified by the Court.

A. Application for appointment of guardian or conservator.

B. Termination of guardianship or conservatorship, other than by death of the minor or conservatee, or the minor attaining the age of majority.

C. Confirmation of sale of real or personal property.

D. Contested matters.

E. Other matters at the request of the Court.

(Effective January 1, 1994)

10.10.05 CONSOLIDATION WITH THE LOWEST NUMBER

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same proceeding, the

Court will, on its own motion, consolidate all of the matters with the file bearing the lowest number. The file bearing the lower or lowest number will be referred to as the controlling file. All documents filed after consolidation shall bear the case number of the controlling file. Upon consolidation, the clerk shall transfer all documents in consolidated files to the controlling file with the exception of a copy of the order of consolidation.

(Effective January 1, 1994)

10.10.06 PREPARATION OF ORDERS

An order or judgment not presented for signature at the time of the hearing should be presented within five days thereafter and shall include in the first paragraph a recitation of the date of the hearing. Such order or judgment shall be dated as of the date heard with an additional blank for the date of the signature.

(Effective January 1, 1994)

10.10.07 FORM OF PAPERS PRESENTED FOR FILING

A. Papers presented for filing with the Clerk of the Court shall conform to California Rules of Court, rule 201, except that descriptions of assets may be single-spaced within each item.

B. Attorneys shall use applicable Judicial Council forms.

C. The provisions of Rule 4.00.01A shall apply to papers presented for filing in Probate matters.

(Effective January 1, 1994; amended January 1, 1998)

10.10.08 PROOF OF ROUTINE MATTERS

The Probate Code requires a verified petition to be received as evidence in an uncontested proceeding. Evidence by written declaration is preferred to oral testimony on the regular calendar.

Effective January 1, 1994)

10.10.09 PREPARING FOR HEARING

A. All documents which are required to be filed prior to the hearing, e.g., proof of service, proof of publication, proof of subscribing witness, etc., shall bear the hearing date below the title of the document.

B. It is the responsibility of counsel to determine, prior to the hearing, that all necessary proofs of mailing notice, affidavits of publication, receipts, and other evidentiary matters are on file and that the matter is ready to be heard.

(Effective January 1, 1994)

10.10.10 REFERENCES TO PROBATE CODE

Unless otherwise indicated, all section references are to the Probate Code.

(Effective January 1, 1994)

10.10.11 WAIVER OF RULE

For good cause shown, the Court in probate proceedings may waive the applications of any local rule in a particular case.
(Effective January 1, 1994)

10.11.00 NOTICES

(Effective January 1, 1994)

10.11.01 PREPARATION OF NOTICES

A. All notices required by the Probate Code to be given by the clerk shall be prepared by the attorney.

B. All notices required to be published (except the notice required by section 8120) must be captioned with the words "Notice of Hearing" followed by the general nature of the petition.

(Effective January 1, 1994)

10.11.02 PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED

When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set, regardless of the filing of a new petition, an amended petition, a new notice, or otherwise.

(Effective January 1, 1994)

10.11.03 REQUIREMENTS FOR GIVING NOTICE OF PROBATE OF WILL

The Notice of Hearing of a petition for probate of will is sufficient notice respecting all instruments which are offered for probate in the petition for which the Notice of Hearing is given. If any other instruments. e.g., alleged wills or codicils not mentioned in the Petition, are presented to the Court by way of an amended petition, a second petition, or otherwise, a new notice thereon must be given setting a date of hearing not earlier than the date set in the original notice.

(Effective January 1, 1994)

10.11.04 SUBSTITUTED SERVICE

A. Where personal service is required by the Probate Code or these rules, substituted service may only be used with the court's prior approval.

B. Substituted service by publication will not be authorized by the court until an affidavit or declaration of the failure of attempted service by other methods of substituted service has been filed.

(Effective January 1, 1994)

10.11.05 ADDITIONAL NOTICE IN COURT'S DISCRETION

Under the provisions of section 1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interest of any person may be adversely affected by the determination of the issue raised by the pleading.

(Effective January 1, 1994)

10.11.06 POSTED NOTICE

When clerk's posted notice is required, a completed Judicial Council form of Notice of Hearing together with all necessary copies shall be filed concurrently with the petition. (Effective January 1, 1994)

10.12.00 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

(Effective January 1, 1994)

10.12.01 SPECIAL LETTERS, NOTICE, AND APPOINTMENT

A. An ex parte petition for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, any other person having priority, and any other person the court determines to be equitably entitled to notice.

B. In appointing a special administrator, preference will be given to the person entitled to letters testamentary or of administration. If it appears that a bona fide contest exists between these persons, the Court will consider the appointment of a neutral party as special administrator.

(Effective January 1, 1994)

10.12.02 CORPORATE AND INDIVIDUAL CO-REPRESENTATIVES

A corporate representative cannot assume responsibility for the acts of its individual co-representative who must provide bond as required by law. Any deposit made under the provisions of the Financial Code for the purpose of reducing bond must be made jointly by the corporate and individual co-representatives.

(Effective January 1, 1994)

10.12.03 AMOUNT OF BOND

A. Notwithstanding its discretion under Probate Code section 8482, the court will ordinarily fix bond in an amount equal to the sum of the estimated value of the personal property and the probable annual gross income of the estate. The Court will also include the estimated net value of real property if full authorization for independent administration of the estate is granted.

B. If the bond is insufficient at any time, the party or his attorney shall immediately obtain and file an additional bond to make the amount of the bond sufficient. The amount of the bond is sufficient if it equals or exceeds the sum of the estimated value of personal property and the probable annual gross income of the estate not including property deposited in accounts from which withdrawals require court authorization. If full authorization under the independent administration of estate has been granted, a sufficient bond shall also include the estimated net value of real property.

(Effective January 1, 1994)

10.12.04 INVENTORY SHALL STATE SUFFICIENCY OF THE BOND

The attorney for a party filing an inventory and appraisement, or the party if not represented by an attorney, shall complete the Judicial Council form concerning the sufficiency of the bond and shall assure compliance with the provisions of rule 303 if the bond is insufficient.

(Effective January 1, 1994)

10.12.05 WAIVER OF BOND

A. When a verified petition for letters testamentary or of administration alleges that all beneficiaries or heirs have waived bond and the petition requests appointment without bond, such waivers shall be in writing and filed prior to the hearing on the petition.

B. If the person seeking letters of special administration is a person nominated in the will as executor and the will waives bond as to that person, then no bond will ordinarily be required of that person acting as special administrator.

C. When a will waives bond as to named co-executors and not all of those named are appointed, the remaining co-executor(s) must post bond in absence of any express provision in the will to the contrary unless waived by the heirs and devisees.

(Effective January 1, 1994)

10.12.06 DEPOSIT OF PERSONAL PROPERTY FOR REDUCTION OF BOND

When an order restricting withdrawals and reducing bond is obtained under Probate Code section 8483, a receipt of the depository acknowledging the restrictions on withdrawal must be filed within 10 days of the order or if the property to be deposited is not then in the possession of the personal representative, within 10 days of receipt of the property by the personal representative. The Court shall continue the matter on calendar to confirm filing of the receipt of the depository.

(Effective January 1, 1994)

10.12.07 DISTRIBUTION OF PROPERTY HELD BY DEPOSITORY

Unless the judgment distributing cash or other personal property held pursuant to section 8483 or section 9701 directs the depository to pay the funds or distribute the property so held to the distributees, additional bond to comply with section 8480 must be furnished.

(Effective January 1, 1994)

10.12.08 MULTIPLE REPRESENTATIVES

When multiple representatives are appointed by an order which directs that "letters shall issue to them," the clerk will not allow less than all to qualify.

(Effective January 1, 1994)

10.12.09 PROOF OF WILLS BY AFFIDAVIT OR DECLARATION

A. The Court prefers that both formal witnessed wills and holographic wills be proven by affidavit or declaration rather than by testimony.

B. Proof as to the admissibility of each testamentary document must be submitted; except that in the event there is a codicil which expressly republishes the will, proof of the execution of the codicil may be deemed sufficient.

C. The copy of the will attached to the proof of subscribing witness must be certified by the attorney of record or by endorsement of the Clerk of the Court.

D. Self-proving wills need no additional proof unless requested by the Court.

(Effective January 1, 1994)

10.12.10 COPY OF WILL TO BE ATTACHED TO PETITION FOR PROBATE

A. A petition for probate of will or for letters of administration with the will annexed must have a photocopy of the will attached at the time of filing the petition.

B. If the will is handwritten, a typewritten copy of the will must also be attached to the petition.

(Effective January 1, 1994)

10.12.11 PETITION FOR LETTERS WHERE BOND IS REQUIRED

A petition for letters where bond is required must set forth sufficient information to form a basis for fixing bond. This includes information regarding encumbrances on real property where full powers under the Independent Administration of Estates Act are sought.

(Effective January 1, 1994)

10.12.12 LISTING HEIRS, DEVISEES, EXECUTORS AND FIDUCIARIES IN PETITIONS

Petitions for letters testamentary or of administration shall include a list of the names of the following persons:

A. All named executors, including alternate executors;

B. All heirs and devisees, including:

(1) Deceased and contingent devisees except those contingent devisees whose interests have been clearly precluded by survivorship provisions in the will.

(2) Devisees shall be listed even if the interests of such persons appear to have been revoked by a subsequent will or codicil.

(3) Persons who are potentially intestate heirs under Probate Code sections 6147, 6402.5, and 6408. This includes persons whose interests are dependent on characterization of property as community or separate.

C. Fiduciaries named in a will or codicil presented for probate, including all nominees as trustee, guardian, or alternates thereof.

(Effective January 1, 1994)

10.12.13 AGE, ADDRESS AND RELATIONSHIP

The petition shall also include the following with respect to persons required to be named in Rule 10.12.12:

A. The address, including the residence number, street, city, state, and zip code, or post office box number customarily used for residence mailing purposes;

B. The relationship of the person to the decedent;

C. The age of the person; except that a person over the age of 18 may simply be designated as an adult unless the person's age is relevant to the person's interest in the estate.

(Revised July 1, 1996)

10.12.14 NOTICING PERSONS LISTED IN PETITIONS FOR ADMINISTRATION

All persons listed in the petition pursuant to Rule 312 shall be given notice of the petition for letters of administration or letters

testamentary.

(Effective January 1, 1994)

10.12.15 INFORMATION REQUIRED OF PERSONAL REPRESENTATIVES UPON ACKNOWLEDGMENT OF DUTIES

The driver's license numbers of personal representatives (other than public officers or trust companies) shall be provided in the receipt of the acknowledgment of duties and liabilities required by section 8404. These numbers shall be kept confidential and shall not be made available for public inspection without a court order.

(Effective January 1, 1994)

10.13.00 MOTIONS, PETITIONS, AND ORDERS

(Effective January 1, 1994)

10.13.01 CAPTIONS

The caption in each petition or motion filed in a probate matter shall identify each matter requiring action by the Court.

(Effective January 1, 1994)

10.13.02 WAIVER OF SPECIAL NOTICE REQUIRED FOR EX PARTE ORDERS

If a special notice has been requested, waiver thereof must accompany the application for an ex parte order as to a matter covered by section 1250 et seq.

(Effective January 1, 1994)

10.13.03 PETITION TO SUPPORT EX PARTE ORDER

An ex parte order will not be granted unless accompanied by a petition, affidavit, or declaration (where applicable) in support thereof.

(Effective January 1, 1994)

10.13.04 ORDERS TO BE COMPLETE IN THEMSELVES

All orders and judgments in probate matters must be complete in themselves. All matters actually passed on by the Court, including the relief granted, the names of persons and descriptions of property (including assessor's parcel number and specific legal description), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements must be set forth with the same particularity that is required in judgments in civil matters.

(Effective January 1, 1994)

10.13.05 NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS

A. If, through inadvertence, the Minute Order or the signed decree fails to state the order actually made by the Court, the Court will, on motion, make a nunc pro tunc order correcting the mistake. Such a motion must normally be supported by an affidavit or declaration.

B. If the nunc pro tunc order does not take the form of a completely amended order reflecting its nunc pro tunc character, it should be substantially in the following form: "On motion to correct a clerical error, the (identify the order to be corrected, giving the title and date thereof) is corrected by striking the following: (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter).

C. To prevent further errors, not less than a complete clause or sentence should be stricken, even if it is intended only to correct one word or a figure.

(Effective January 1, 1994)

10.13.06 ORDERS FOR FAMILY ALLOWANCE

A. If made before the filing of the inventory, a petition for family allowance for persons described in section 6540(a) may be presented ex parte to the Court. Ordinarily, the order will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six months. When the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the personal representative must accompany any ex parte petition.

B. If the application is made more than six months after date of death or is a petition for a second or additional allowance, it should be noticed and placed on the calendar. Such subsequent order will be limited to a definite period, usually not to exceed 12 months.

C. The person seeking an allowance shall set forth such person's income from sources outside the estate, as well as an itemization of the applicant's separate property and monthly expenses, and shall make an appropriate showing of the assets and liabilities of the estate.

(Effective January 1, 1994)

10.13.07 WITHDRAWAL OF ATTORNEY OF RECORD

A. If an attorney wishes to withdraw as attorney of record in a probate proceeding, the attorney must have a citation issued and personally served directing the representative to appear before the Court to show cause why the petition or motion should not be granted.

B. All motions or petitions to withdraw as counsel must contain an affidavit or declaration stating the client's last known address. Whenever the affidavit or declaration shows that counsel is unable to locate the client, after making diligent effort, the client must be served in compliance with Code of Civil Procedure section 1011, subdivision (2). Simply mailing the notice to the client's address in the file will not be sufficient.

C. Motions for withdrawal of the attorney require service of the Notice of Hearing and Petition by mail as follows:

(1) In decedent's estate proceedings, 15 days by mail to all heirs and devisees and to all persons having requested special notice;

(2) In conservatorship or guardianship proceedings, 15 days by mail to all persons who were required to be noticed in the petition for appointment and to all persons having requested special notice.

(Effective January 1, 1994)

10.13.08 ESCHEAT PETITIONS

A. A genealogy chart must be attached to the petition showing the relationship of the claimant to the decedent and all heirs of the decedent, including deceased heirs who have or would have had standing to inherit equal to or greater than that of the claimant.

B. A copy of the decree of distribution must be attached to the petition.

C. All documentary evidence in support of the petition must be on file at the time the matter is calendared for hearing.

D. In the absence of satisfactory proof that the petitioner(s) has (have) sole entitlement to the escheated property, payment of all of the property shall not be ordered until after expiration of the time to file claims.

(Effective January 1, 1994)

10.13.09 LODGING OF ORIGINAL WILL AND PROOF IN SUMMARY PROCEEDINGS

A. In any proceedings pursuant to Probate Code sections 13150, 13200, and 13650, wherein the successor in interest is determined by a will, the Court will require proof that the original will is on file with the Clerk of the Court (Prob. Code, §8200).

B. Proof of the will in the above proceedings must be submitted in conformance with the requirements of Probate Code section 8220 et seq.

(Effective January 1, 1994)

10.14.00 CREDITORS' CLAIMS

(Effective January 1, 1994)

10.14.01 CLAIMS OF EXECUTORS AND ADMINISTRATORS FOR PERSONAL SERVICES

Where the claim is for $1,000, or more, the claim of a personal representative, based on personal services rendered to the decedent, will not be approved by the Court until a hearing has been held. At least 15 days' notice thereof shall be given to all affected beneficiaries and heirs.

(Effective January 1, 1994)

10.14.02 APPROVAL OF FUNERAL CLAIMS

A. Funeral expenses (including the cost of interment, interment plot, endowment care, and a suitable monument) proportionate to value of decedent's assets, and in keeping with the standard of living adopted by the decedent prior to his or her death, or as provided in the will, will be approved by the Court. The burden of proof as to the reasonableness of the claim for funeral expenses is on the personal representative.

B. When interest has been paid in connection with the delayed payment of a claim for funeral expenses, a specific reason for the delay must be made in the report accompanying the account in which credit for such payment has been taken.

(Effective January 1, 1994)

10.14.03 REPORT ON CLAIMS

In a report accompanying an account, or in a report where an accounting is waived, it is not sufficient to allege merely that all claims have been paid. All information required by Probate Code section 10900 with respect to liabilities of the estate must be set forth in full. The following information shall be included:

A. A list of the claims filed or presented showing as applicable: (1) the name of each claimant; (2) the amount claimed; (3) the date that notice of administration was mailed to the claimant; and (4) the dates that the claim was presented, filed, allowed or rejected, and paid.

B. The status or disposition of any lawsuits on rejected claims.

C. Whether notice was mailed to known creditors within four months of the issuance of letters (§9050), and the disposition of any known debts as to which the notice was not mailed.

D. If creditors were paid without timely filed claims (§9150), allegations whether written demand was made within four months of the issuance of letters, the payment was made within 30 days after that period, the estate is solvent, and the debt was justly due and paid in good faith for the true amount.

E. Whether notice was required and given to the Director of Health Services (§9202).

(Effective January 1, 1994)

10.14.04 PROOF OF SERVICE ON REJECTED CLAIMS

Proof of service of the rejection of any claim under Probate Code section 9250 must also be filed with a copy of the notice of rejection.

(Effective January 1, 1994)

10.15.00 SALES

(Effective January 1, 1994)

10.15.01 REAPPRAISAL OF REAL PROPERTY FOR SALE

In a decedent's estate, if the date of death is more than one year prior to the date of the hearing for confirmation of sale, a reappraisal for sale by the probate referee is required with a valuation date within one year of the hearing in compliance with Probate Code section 10309.

(Effective January 1, 1994)

10.15.02 BOND ON SALE OF REAL PROPERTY

A petition for confirmation of sale of real property should set forth the amount of bond, if any, in force at the time of the sale and the amount of any additional bond required by reason of the receipt of the proceeds of the sale. If no additional bond is required, or if bond is waived, such fact should be alleged.

(Effective January 1, 1994)

10.15.03 BROKER'S COMMISSION ON SALE OF REAL PROPERTY

Upon the confirmation of the sale of real property, a broker's commission in excess of the amounts set forth in the following schedule will not be allowed:

Improved property 6%

Unimproved property 10%

(Effective January 1, 1994)

10.15.04 LISTING AGREEMENT

Statutory provisions concerning listing agreements for the sale of real property are set forth at Probate Code section 10150 et seq. A petition for authorization to enter into a listing agreement submitted for court approval must be accompanied by a copy of the proposed agreement. Personal representatives with authority under the Independent Administration of Estates Act need not submit proposed listing agreements to the Court for approval.

(Effective January 1, 1994)

10.15.05 NOTICE AND HEARING ON CONFIRMATION OF SALE OF REAL PROPERTY

A. The notice of sale of real property should normally call for "cash or such credit terms and conditions as the personal representative and the court may approve."

B. All terms and conditions of the sale must be set forth in the return of sale.

C. Notice of the hearing and the petition for confirmation of sale shall be served by mail on the proposed purchaser(s) at least 15 days prior to the hearing.

D. In conservatorship and guardianship estates, notice of hearing and the petition for confirmation shall be served by mail on the conservatee or ward, if 14 years of age or older, at least 15 days prior to the hearing unless notice is dispensed with by the court.

E. Counsel must appear at all confirmation hearings.

(Effective January 1, 1994)

F. A 10% deposit in the form of cash or certified check must be submitted at the hearing in order for a person to bid on real property.

(Revised July 1, 2005)

10.15.06 SALE OF SPECIFICALLY DEVISED PROPERTY

On a sale of specifically devised real or personal property, 15 days' notice of the time and place of hearing of the petition for confirmation must be given to the devisee, or his or her consent to such sale must be filed.

(Effective January 1, 1994)

10.15.07 SALES OF SECURITIES PURSUANT TO SECTION 10200

If securities are "closely held" or are not traded on an established stock or bond exchange, the petition should state the basis (by appraisement or otherwise, in the discretion of the Court) for fixing the minimum sales price.

(Effective January 1, 1994)

10.16.00-10.16.09 RESERVED FOR FUTURE USE

10.17.00 ACCOUNTS, FEES AND DISTRIBUTION

(Effective January 1, 1994)

10.17.01 FORM OF ACCOUNT

A. Every account (including decedents' estates, guardianships, conservatorships, and trusts) shall contain the following data: receipts, gains on sales, disbursements, losses on sales, other credits, and a detailed list of property on hand. The schedules of receipts and disbursements shall show for each item: (1) the date of each transaction; (2) the identity of the payor or payee; (3) the nature or purpose of each transaction; and (4) the amount received or disbursed.

B. The schedule of receipts for the account must clearly identify each reported item of income.

C. The schedule of gains and losses must reflect all sales, even if the items are sold at no gain or loss.

D. The period of the account shall be expressly stated in the account.

E. Inter-account transfers or capital changes should not be reflected as receipts or disbursements.

Each account shall also contain a recapitulation or summary in substantially the following form:

SUMMARY OF ACCOUNT

Petitioner is chargeable and is entitled to credit as set forth in this summary of account:

CHARGES

Amount of inventory and appraisement (or if subsequent account, amount chargeable from prior account)	$_____
Receipts During Accounting Period (Schedule A)	$_____
Gains on Sales (Schedule B)	$_____
Other Charges (Schedule C)	$_____
TOTAL CHARGES	$_____

CREDITS

Disbursements During Accounting Period (Schedule D)	$_____
Losses on Sales (Schedule E)	$_____
Other Credits (Schedule F)	$_____
Property on Hand (Schedule G)	$_____
TOTAL CREDITS	$_____

(Effective January 1, 1994)

10.17.02 INVESTMENT PERFORMANCE INFORMATION

A. This rule shall apply only to conservatorship, guardianship, and trust estates which have an estimated fair market value of $100,000, or more, exclusive of any residence in which a conservatee, ward, or beneficiary resided for at least one-half of the term of the accounting.

B. The schedule of the property on hand at the end of the accounting period must reflect both the carried value and the estimated market value of all assets (a good faith estimate of value will suffice; formal appraisals are not required).

C. The report shall include the rate of return on each investment in excess of $10,000.

(Effective January 1, 1994)

10.17.03 WAIVER OF ACCOUNT (DECEDENTS' ESTATES)

A. The detailed accounting may be waived when all residuary beneficiaries and other distributees whose interests may be affected by the account have waived the accounting. Such waiver shall be in writing and filed with the Court either as part of the Petition or separately.

B. Even though an account has been waived, the report must set forth any gain or loss on sale of property.

(Effective January 1, 1994)

10.17.04 COMPENSATION MUST BE STATED

A. In a petition for distribution, whether or not accompanied by an accounting, there shall be a calculation of the statutory compensation of the personal representative and the attorney.

B. Use of a schedule in substantially the following form is recommended:

AMOUNT OF ESTATE ACCOUNTED FOR AND COMPUTATION OF STATUTORY FEES AND COMMISSIONS

Amount of Estate Accounted For

Inventory and appraisement	$_____
Receipts during accounting period (Schedule A)	$_____
Gains on sales (Schedule B)	$_____
TOTAL	$_____
Less Losses on sales (Schedule D)	$_____
TOTAL ESTATE ACCOUNTED FOR	$_____

Computation of Statutory Fees and Commissions

Four percent (4%) on first $15,000.00	$ 600.00
Three percent (3%) on next $85,000.00	$ 2,550.00
Two percent (2%) on next $900,000.00	$18,000.00
One percent (1%) on excess	$_____
TOTAL	$_____

C. When an account has been waived, computation of commissions and fees shall be based on the inventory values plus gains and less losses. Receipts will not be considered in the computation of commissions and fees unless a schedule of receipts is submitted in the report.

(Effective January 1, 1994)

10.17.05 ALLOWANCE ON ACCOUNT OF COMPENSATION

An allowance on account of compensation shall be in accordance with the work actually completed. Until the final account is settled, the total amount of statutory compensation cannot be fixed, and any allowance made prior to that time must be low enough to avoid the possibility of overpayment. Except for good cause shown, the last 25 percent of the statutory compensation will not be allowed prior to the approval of the final account and the judgment of distribution. Notice of hearing of petition for allowance on account of compensation must be given as required by section 10830.

(Effective January 1, 1994)

10.17.06 COMPENSATION FOR EXTRAORDINARY SERVICES

A. In an application for compensation for extraordinary services, the title of the petition and the notice of hearing shall include a reference to the request. A description of the nature of the services, time expended thereon, and amount of compensation requested for each service shall be included. In some instances, the court may require additional detailed documentation showing for each date the service performed and the time expended.

B. Notice of the petition for compensation for extra services must be given as required by sections 10830 and 10831.

C. Services rendered with respect to termination of joint tenancies are not the subject of extraordinary compensation, except when the decedent was the surviving joint tenant.

(Effective January 1, 1994)

10.17.07 FEES OR COMMISSIONS TAKEN IN ADVANCE

A. Commissions and fees in decedent's estates, guardianships, and conservatorships shall not be paid from the estate prior to

court authorization.

B. In trusts subject to continuing court jurisdiction, trustees' fees shall not be paid prior to court authorization unless payment without prior court order is expressly authorized in the trust instrument. The Court may prospectively authorize a trustee to take fees quarterly but not in a total amount exceeding three quarters of the expected annual fees. Under no circumstances shall trustees' fees be paid prior to performance of the services to which they relate.

(Effective January 1, 1994)

10.17.08 COSTS

The cost of long distance telephone calls and unusual amounts of photocopies and postage, if properly itemized, shall be allowed as costs of administration.

(Effective January 1, 1994)

10.17.09 DESCRIPTION OF PROPERTY DISTRIBUTED

A. The petition for distribution, as well as the judgment of distribution, shall list and describe all property, including the assessor's parcel number and specific legal description of real property to be distributed. In case of intestacy: (1) where the decedent leaves a surviving spouse, the petition shall allege whether the property is community or separate; and (2) where distribution is to be made pursuant to section 6402.5, the source of the property shall be alleged.

B. A supplemental account must be presented if assets in excess of $1,000 or more are withheld from initial final distribution, unless the account has been waived.

(Effective January 1, 1994)

10.17.10 PETITION TO INCLUDE PROPOSED DISTRIBUTION

A. Details of the proposed distribution shall be set forth either in the body of the petition or by attachment. Terms of the will as to disposition of property and what is to be distributed under the laws of intestate succession shall be set forth.

(Effective January 1, 1994)

10.17.11 AGREEMENTS FOR DISTRIBUTION

A. If the distributees seek a distribution in a manner other than that provided by the will or by the laws of intestate succession, a written agreement must be filed in the probate proceeding or consent thereto endorsed on the petition. The order of distribution shall include reference to the assignment, agreement or disclaimer which is the basis for the distribution.

B. A minor distributee or other distributee under disability must be represented by his or her legal representative; and prior court approval of the agreement, assignment, or disclaimer must be obtained if the distributee is subject to a guardianship or conservatorship.

(Effective January 1, 1994)

10.17.12 DISTRIBUTION TO MINORS

A. The Court will permit distribution of personal property to parents of a minor, if the minor is entitled to receive the property under the provisions of section 3401. The decree should indicate that the distribution is made pursuant to section 3401. An affidavit or declaration complying with the terms of section 3401, or an appropriate order under section 3401, must be on file prior to signing the decree.

B. In all other cases, the property must be distributed to the minor with a direction in the decree that the property be distributed, pursuant to section 3410 et seq., to the legal guardian of the minor or a duly appointed custodian under the California Uniform Transfers to Minors Act. The guardian, custodian, or depository shall sign the distributee's receipt.

(Effective January 1, 1994)

10.17.13 DOCUMENTS TO BE ON FILE BEFORE HEARING FOR DISTRIBUTION

Where a guardian of a minor must be appointed, or affidavits or declarations are required under section 3401 or Probate Code section 13101, or proceedings are had under section 3410 et seq., the guardian must be appointed or such affidavits or

declarations, or a certified copy of the order made under section 3410 et seq., and rule 1008 shall be filed prior to the hearing on the petition for distribution. When distribution is to be made to a testamentary trustee, the consent of the trustee to act must be filed prior to the hearing on the petition for distribution.

(Effective January 1, 1994)

10.17.14 PETITION FOR FINAL DISTRIBUTION

A. Petitions for final distribution must include a report of the following:

(1) The character of all assets as separate or community where there is a surviving spouse;

(2) All capital transactions and other actions taken under the Independent Administration of Estates Act, including the amounts of any gains or losses;

(3) Disclosure of liabilities and other matters necessary to show the condition of the estate (§10900);

(4) Allegations in compliance with Rule 503 (Report on Claims); Rule 706 (Compensation Must be Stated); Rule 711 (Description of Property Distributed); and Rule 712 (Petition to Include Proposed Distribution);

(5) That no federal or California estate taxes are payable or that they have been paid;

(6) That income taxes and all other taxes (e.g., supplemental real property or personal property taxes, if any) have been paid or otherwise provided for;

(7) Whether surplus cash was kept in interest-bearing accounts (§2624).

B. If estate taxes are payable or paid: (1) the petition shall set forth whether said taxes were prorated pursuant to Probate Code section 970/20100 et seq. or the provisions of the will; and (2) the petition must reflect whether or not there are non-probate assets includable in the gross estate for estate tax purposes.

(Effective January 1, 1994)

10.17.15 SPOUSAL PROPERTY ELECTION

Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to section 13502 must be supported by a written election expressly indicating a consideration of the alternative procedures available pursuant to section 13650. Written elections pursuant to Probate Code section 13502 shall contain an express acknowledgment that the inclusion of property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney fees.

(Effective January 1, 1994)

10.18.00 JOINT TENANCIES AND LIFE ESTATES

(Effective January 1, 1994)

10.18.01 PROCEEDINGS MUST BE IN NAME OF DECEDENT

A petition to establish the fact of death must be filed in the name of the deceased person whose interest has been terminated.

(Effective January 1, 1994)

10.18.02 SEPARATE PETITION PREFERRED

Section 202 authorizes a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. However, attorneys are encouraged to file a separate petition under the same number in order to avoid administrative difficulties. No such separate petition may be filed after the filing of a petition for final distribution; and, if a petition to establish fact of death is then filed, it should be in a new proceeding under a new number. (Effective January 1, 1994)

10.19.00 GUARDIANSHIPS AND CONSERVATORSHIPS—GENERAL PROVISIONS

(Effective January 1, 1994)

10.19.01 APPOINTMENT OF TEMPORARY GUARDIAN OR CONSERVATOR

A. On or after filing a petition for appointment of a guardian or conservator, any person entitled to be a guardian or conservator may be appointed as temporary guardian or conservator of the person or estate or both. An endorsed copy of the petition for appointment of a general guardian or conservator shall be submitted with the application for a temporary guardian or conservator.

B. An endorsed copy of the Petition for Temporary Guardian or Conservator shall be served upon the court investigator (El Dorado County Probation Department) along with a citation appointing the court investigator to conduct an investigation re: guardianship (local form available) or conservatorship (Judicial Council Form GC-330).

C. Requests to dispense with notice of a temporary guardianship or conservatorship petition under section 2250 shall be supported by a written declaration setting forth with specificity all facts showing good cause therefor. If a noticed hearing is required the Court will set the matter for hearing.

D. The Judicial Council form Notice of Hearing and a copy of the petition shall be personally served at least five days before the date of hearing on the conservatee or on the minor, if the minor is 14 or older. If the petition is by a person other than a parent, and if a parent or parents of the minor is or are living, notice of hearing and a copy of the petition should be served personally on such parent or parents at least five days before the date of hearing. The Court may require notice to other persons or may waive notice for good cause.

(Effective January 1, 1994)

10.19.02 GUARDIAN'S AND CONSERVATOR'S BONDS

A. Except when the provisions of section 2323 apply, the policies of the Court with reference to bonds in decedents' estates set forth in rules 10.12.03 and 10.12.06 shall be followed in guardianship and conservatorship proceedings. Under section 2323, the Court may dispense with the requirement of a bond.

B. If assets are ordered blocked, a written receipt shall be obtained from the depository acknowledging that principal and earnings shall not be withdrawn without prior court order. The receipt will be filed within 10 days of deposit. The Court shall set a hearing to determine that the deposit has been made and the receipt filed.

(Effective January 1, 1994)

10.19.03 ALLOWANCE OF FEES IN GUARDIANSHIPS OR CONSERVATORSHIPS

A. The guardian or conservator or the attorney for the guardian or conservator may petition the court to determine fees in the manner authorized by section 2640 et seq. The petition shall specify the services rendered and the fees requested. The title of the petition embodying such application and the notice of hearing shall include a reference to the request.

B. The petition shall include a description of the services, time expended, and requested compensation for each service. The court may require additional detailed documentation showing for each date the services performed and the time expended.

(Effective January 1, 1994)

10.19.04 INVESTMENT BY GUARDIAN OR CONSERVATOR

A. The standard set out in section 16040 (providing for investments by trustees) will be the standard applied by the court in authorizing proposed investments by guardians or conservators. The court does not act as an investment counselor but suggests that investments should be prudent and in keeping with the size and character of the ward's or conservatee's estate. Investments in existence at the time of the creation of the guardianship or conservatorship usually may be maintained.

B. The court will not ordinarily authorize the investment of the ward's or conservatee's funds in unsecured loans, secured loans to a near relative, bonds, or obligations of foreign governments or corporations, or debenture bonds except those which are part of a large issue, well-seasoned, and readily marketable.

C. Investments in real estate, either by purchase or encumbrance, will not be authorized unless supported by an appraisement by the probate referee regularly appointed in the guardianship or conservatorship estate. It is preferred that the guardian or conservator be authorized to purchase real estate for cash only.

D. Purchase of life insurance on the minor ward's life will not ordinarily be authorized.

(Effective January 1, 1994)

10.19.05 INVESTMENT PERFORMANCE REPORT

Each accounting of a guardian or a conservator shall be accompanied by a report containing the guardian's or conservator's investment objectives and results with reference to the needs of the ward or conservatee and shall explain why the estate suffered any loss or held unproductive property. (See rule 10.17.02)

(Effective January 1, 1994)

10.19.06 WAIVER OF ACCOUNT

A. If section 2628 (public benefit payments) is applicable, the guardian or conservator may petition the Court for an order dispensing with accounts. Ex parte petitions pursuant to section 2628 will not be granted.

B. A final report setting forth the assets on hand shall be filed upon termination of a guardianship or conservatorship even when accounts have been waived.

(Effective January 1, 1994)

10.19.07 ADDITIONAL POWERS

On the petition of the guardian or conservator at the time of appointment or later, the Court may grant additional powers to the guardian or conservator as authorized by sections 2590 and 2591. Such powers are not automatically granted; and, when requested, sufficient reasons must be shown for their necessity. The Court will grant only those additional powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the Letters of Guardianship or Conservatorship.

(Effective January 1, 1994)

10.19.08 ACCOUNTS

A. The first account shall be filed on or before the anniversary date of the order appointing the guardian or conservator; and subsequent accounts shall be filed at least biennially thereafter. The first account shall be for a minimum period of nine months from date of appointment.

B. Where there are multiple wards joined in a single guardianship proceeding, an account shall reflect a separate accounting for each of the respective wards.

C. Along with each account, the current address of the conservatee and conservator, or guardian and ward shall be filed with the Court.

(Effective January 1, 1994)

10.19.09 IDENTIFYING NUMBERS

Driver's license number of the conservator, conservatee, guardian, or ward shall be presented to the Probate Investigator's Office on request. Social Security number may be requested provided the individual is informed that disclosure is voluntary. These numbers are to be used by the Investigator's Office for the performance of investigatory duties only and will not be disclosed to third persons without prior court authorization.

(Effective January 1, 1994)

10.19.10 CONSERVATORSHIP HANDBOOK AND VIDEO PRESENTATION OF CONSERVATOR'S DUTIES

Prior to the hearing on a conservatorship petition, the proposed conservator shall verify in writing that he or she has viewed the 1991 videotaped presentation prepared by the Sacramento County Superior Court on the duties and responsibilities of conservators. This video presentation is available in the court's library facility for viewing during the regular court business hours. The requirement of this rule may be dispensed with if the attorney for the proposed conservator so requests and certifies in writing that the duties and responsibilities of the conservator have been fully explained to the proposed conservator. The conservator shall also purchase the conservator handbook available from the Court Clerk's Office and certify in writing that he or she has read the book.

(Effective January 1, 1994)

10.20.00 GUARDIANSHIPS OF MINORS

(Effective January 1, 1994)

10.20.01 APPOINTMENT OF GUARDIAN OF MINOR

A. The attorney for the petitioner shall be responsible for the mailing of all required notices. If there are no relatives within the second degree, the petition shall so allege. A copy of the petition shall accompany each notice of hearing.

B. At the time of filing the petition for appointment, the attorney for the petitioner shall file a notification to the court of address on conservatorship or guardianship.

C. All petitions for appointment shall be set for hearing no sooner than 30 days after filing.

D. There shall be no ex parte appointment of a permanent guardian.

E. Petitions for guardianships shall contain an allegation as to whether or not the minor(s) has been or is a party to a civil action in which monetary damages are claimed. If the minor(s) is such a party, the file number of the action must be indicated, as well as the name of the county in which the case is pending.

(Effective January 1, 1994)

10.20.02 HEARING ON PETITION FOR APPOINTMENT OF GUARDIAN OF NON-RELATIVE MINOR

A petition for appointment of guardian of a minor shall be set for hearing, and notice of hearing thereon shall be given as provided in section 1511, subject to the exceptions stated therein.

(Effective January 1, 1994)

10.20.03 EFFECT OF OTHER PROCEEDINGS

A guardianship of the person will not be granted by the Probate Court under any of the following circumstances: (a) Family Law Court has jurisdiction over custody of the proposed ward; (b) adoption proceedings are pending; or (c) the minor is subject to the jurisdiction of the Juvenile Court.

(Effective January 1, 1994)

10.20.04 DUTIES OF GUARDIAN—SUPPORT BY PARENTS

Guardianship funds shall not be used for a minor's support, except upon a showing of the parents' financial inability or other circumstances which would justify the same. If there is a claim that the parents lack financial ability to provide support, the parents shall file Family Law Income and Expense and Property Declarations in accordance with California Rules of Court 1285.50 and 1285.55.

(Effective January 1, 1994)

10.20.05 FINAL ACCOUNT AND REPORT

A. Waiver of guardian's final account will be permitted for good cause. The final account shall be set for hearing no sooner than 20 days after filing.

B. Waiver of a guardian's account by a ward who has attained the age of majority will not be accepted unless the ward personally appears and confirms the waiver or a written waiver by the ward is filed which includes a complete list of the assets to be distributed to the ward.

C. The final report and/or account shall include a description of the remaining assets on hand to be distributed to the ward.

(Effective January 1, 1994)

10.20.06 TERMINATION AND DISCHARGE

A. Upon approval of the final account, the Court will order all assets belonging to the estate to be delivered to the former ward

or to the depository under section 3412, if applicable.

B. One year after majority, upon a proper showing, the final discharge will be granted in the same manner as the discharge of the fiduciary of a decedent's estate. Upon the ward's attaining the age of majority, a guardianship of the person terminates pursuant to section 1600 without court order.

(Effective January 1, 1994)

10.20.07 PROCEEDINGS UNDER SECTION 3410 ET SEQ

A. Petitions filed under section 3410 et seq. must be filed in a separate proceeding under the name of the minor, and must set forth jurisdictional facts and state the amount to be paid, by whom, and what reimbursement for costs and fees is requested, and request the deposit of the balance of the proceeds in a specific bank or savings and loan association in the manner provided by law.

B. If the petition merely seeks the deposit of funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the Court without notice. If, however, attorney's fees are sought, the matter must be noticed for hearing on the court's regular calendar.

C. The order shall provide for the persons holding funds to make one check payable to the persons entitled to costs and fees and shall provide for the issuance of a second check for the amount to be deposited, payable to the proposed trustee and the specific bank or savings and loan association.

(Effective January 1, 1994)

10.20.08 COSTS OF INVESTIGATIONS

Court investigations will be conducted upon filing of the guardianship petition and at the time of each accounting. Charges will be assessed for each investigation and review pursuant to section 1513.1.

(Effective January 1, 1994)

10.21.00 CONSERVATORSHIPS

(Effective January 1, 1994)

10.21.01 APPOINTMENT OF CONSERVATOR

A. The attorney for the petitioner shall be responsible for the mailing of all required notices. If there are no relatives within the second degree, the petition shall so allege. Notice of hearing of a petition for the appointment of a conservator shall be given pursuant to section 1822. A copy of the petition shall accompany each notice of hearing. There shall be a separate proceeding for each person for whom the appointment of a conservator is sought.

B. At the time of filing the petition for appointment, the attorney for the petitioner shall set forth the address of the conservator and proposed conservatee. All petitions for appointment shall be set for hearing no sooner than 30 days after filing.

C. Proposed conservators, except public officers and corporate fiduciaries, shall appear personally for the hearing on the petition for appointment as conservator.

D. Upon approval of a petition for appointment of a conservator, the Court will order the conservator to file a "general plan" detailing how the personal and financial needs of the conservatee will be met. A copy of the plan shall be provided to the Court Investigator, and notice of the filing of the general plan shall be given to those persons who have been given notice of the petition.

The general plan may be reviewed by those persons who have been given notice of the petition and who request to review the general plan. A hearing date will usually then be set at least 120 days from the date of appointment for a hearing on the general plan.

(Effective January 1, 1994)

10.21.02 PLACING PETITION ON CALENDAR

When a petition is filed the hearing shall be set within 30 days and a citation shall issue accordingly. If service of the citation is incomplete on the return date, it cannot be perfected by continuance and completion of service, except by issuance of an amended

citation. In such circumstances, the original citation shall be filed showing no service.

(Effective January 1, 1994)

10.21.03 TERMINATION OF CONSERVATORSHIP

A. A conservatorship may be terminated pursuant to section 1860 et seq. Except in cases where the conservatee is deceased, a petition for termination shall be set for hearing no sooner than 30 days after filing; the Petition shall set forth the current address of conservatee. The Court Investigator shall be noticed of the petition for termination of conservatorship.

B. A petition for termination of conservatorship of a living person will not be granted unless the conservatee personally appears in court or is excused after the filing of a physician's affidavit or declaration setting forth the reasons why the conservatorship is no longer required.

(Effective January 1, 1994)

10.21.04 FINAL ACCOUNT AND REPORT

A. When a final account or report is filed, notice of hearing shall be given pursuant to section 2621. If the conservatee is deceased, notice of hearing shall be given to the representative of his estate and the Court Investigator. If the conservator is also the personal representative of the deceased conservatee's estate or there is no personal representative, notice shall be given to the deceased conservatee's heirs and devisees. The names, relationships, and addresses of the heirs and devisees shall be set forth in the report.

B. A final account shall be required on termination of the conservatorship of an estate except under the following circumstances: (1) the former conservatee who has been restored to full capacity waives the accounting; (2) if the conservatee is deceased, when an account is waived by those persons entitled to receive distribution of the estate as provided in Probate Code section 10954; except that if conservator is also the personal representative of the conservatee's estate, waivers shall be required by all heirs or devisees; or (3) when the court has ordered that accounts are not required pursuant to Probate Code section 2628 and the conditions of that section are otherwise met.

C. The report shall include a statement of the specific assets on hand.

(Effective January 1, 1994)

10.21.05 SALE OF CONSERVATEE'S RESIDENCE

Sale of a conservatee's residence requires prior authorization in compliance with section 2540(b). Petitions for authorization of sale of the conservatee's residence and/or authorization to execute a listing agreement for sale of the conservatee's residence will be considered only upon a calendared motion with notice given pursuant to section 1460 (general mailed notice) and section 2702 (special notice). (Effective January 1, 1994)

10.21.06 CONFIDENTIAL REPORTS, SUPPLEMENTS, OR PLANS

Any confidential report, supplement or plan filed in conservatorship proceedings pursuant to section 2620.1 (accounts) or 1821 (establishment) shall be filed as a separate document, shall contain the word "CONFIDENTIAL" in the caption, and shall be verified by the party presenting it.

(Effective January 1, 1994)

10.22.00 CLAIMS OF WARDS OR CONSERVATEES

(Effective January 1, 1994)

10.22.01 SETTLEMENT OF WARDS' AND CONSERVATEES' CLAIMS

Compromise of the claim of a ward or conservatee shall be made in the manner provided by section 2500 et seq., and in accordance with Local Civil Rules regarding compromise of minor's claims.

(Effective January 1, 1994)

10.23.00 TRUSTS SUBJECT TO CONTINUING COURT JURISDICTION

(Effective January 1, 1994)

10.23.01 IN GENERAL

A. Accounts filed by trustees shall be in the form and otherwise conform to the requirements in these rules for accounts by personal representatives in decedents' estates.

B. The trustee's first account must clearly reconcile the amount chargeable under the judgment of distribution of the estate from which the property was received.

(Effective January 1, 1994)

10.23.02 PERIOD OF ACCOUNT

The first account of a trustee subject to continuing court jurisdiction shall be rendered one year after the judgment of distribution of the estate from which the trust property was received. Thereafter, accounts shall be rendered at intervals prescribed by the court as the nature of the trust property and the interests of the beneficiaries require. (Effective January 1, 1994)

10.23.03 PRINCIPAL AND INCOME

Receipts and disbursements must be allocated between principal receipts and disbursements and income receipts and disbursements. (Effective January 1, 1994)

10.23.04 FEES

Fees are governed by the provisions of rule 10.19.03.

(Effective January 1, 1994)

10.23.05 REPORT OF TRUSTEE

A report shall accompany each account of a trustee. The report shall contain concise reference to the purposes of the trust and how they have been satisfied by the trustee during the period of the account. The report shall identify the beneficiaries (both present and future) and give a brief summary of distributions made to or for their benefit, as reflected in the account. Investment objectives, and results with reference to the purpose of the trust, are to set forth with a brief summary of the account measured in terms of the specific trust objectives and requirements. The report shall not merely recite what has been done but shall relate the activities reflected in the account to the purposes and persons for which the trust was created. (See rule 10.17.02)

(Effective January 1, 1994)

10.24.00 COURT APPOINTED COUNSEL IN GUARDIANSHIPS AND CONSERVATORSHIPS

A. Purpose: The purpose of this rule is to ensure that counsel appointed for minors in guardianship proceedings or for appointment to represent conservatees or proposed conservatees in probate proceedings meet the professional qualifications imposed by California Rules of Court, Rule 7.11.01.

B. General Criteria: To be eligible for appointment as counsel under Probate Code §1470 or §1471 for a minor in a guardianship proceeding or to represent conservatees of proposed conservatees, an attorney must be an active member of the State Bar of California for at least three (3) years immediately before the date of appointment and have no discipline imposed within a 12-month period prior to appointment. In addition, he or she must have professional liability insurance in the amount of $100,000.00 per occurrence and $300,000.00 per year.

Appointed counsel must meet the minimum appointment qualifications prescribed by California Rules of Court, Rule 7.11.01 and annually complete three hours of MCLE credit for State Bar-certified specialists in estate planning, trust and probate law.

C. Certificate of Qualifications: Prior to initial appointment counsel must certify to the Court, in writing, that he or she has met the qualifications for appointment.

Thereafter, before the end of March of each following year, counsel must file a certificate indicating that he or she has met the continuing education requirement for the preceding calendar year, counsel's professional liability insurance coverage in the amount of at least $100,000.00 per claim and $300,000.00 per year, and any history of State Bar discipline. Any change in State Bar discipline history or professional liability insurance coverage should be explained.

Counsel is required to immediately advise the Court of the imposition of any State Bar discipline.

D. Form of Certificate:

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
PROBATE DEPARTMENT
CERTIFICATE OF ATTORNEY QUALIFICATION

I, _____

(Name - Office Address - Telephone Number)

am an attorney licensed to practice law in the State of California. My State Bar Number is _____. I hereby certify that I meet the minimum standards for practice for representation of a minor in a guardianship proceeding or representation of a conservatee or proposed conservatee set forth in California Rules of Court, Rule 7.11.01 and Local Rule 10.24.00 and that I have completed the minimum requirements for training, education and/or experience as set forth below.

This is a [ ] New Certification [ ] Recertification

Training and Education: (Attach copies of MCLE certificates or other documentation of attendance)

Course Title Date completed Hours Provider

Summary of Relevant Experience:

Date _____ Signature _____

E. Required Qualifications for Private Counsel

(1) Appointments to Represent Minors in Guardianship Proceedings

In addition to satisfying the general criteria and the annual continuing education requirement, counsel must either:

(a) Within the previous five years, have represented three wards or proposed wards in probate guardianships, three children in juvenile court dependency proceedings, or three children in custody proceedings under the Family Code; or

(b) Have been certified by the Court as eligible for appointment under California Rules of Court, Rule 5.242 and Local Rule 8.23.00 to represent minors in family law child custody and visitation proceedings or has been certified as eligible for appointment under California Rules of Court, Rule 5.660 and local Rule 11.00.12 to represent parties in juvenile dependency proceedings.

(2) Appointments to Represent Conservatees or Proposed Conservatees

For an appointment to represent a conservatee or a proposed conservatee, counsel must have represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships or complete three of the following five:

(a) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;

(b) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party in two contested probate or LPS conservatorship matters.

A contested matter that qualifies under this item and also qualifies under (i) may be applied toward satisfaction or both items;

(c) Represented a party for whom the Court could appoint legal counsel in a total of three matters described in Probate code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140 or 3205;

(d) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under division 9 of the Probate Code; or

[e]~~(b)~~ Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.

F. Required Qualifications for Deputy Public Defenders: To be eligible for appointment, a deputy public defender must either satisfy the same requirements as private counsel for appointment to represent a minor in a guardianship proceeding or a

conservatee or proposed conservatee in probate proceeding or have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in postcertification judicial proceedings or conservatorships under the LPS Act.

(Effective July 1, 2009)

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Fresno County
Probate Rules

Effective January 1, 2010

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CHAPTER 7. PROBATE RULES

RULE 7.1 PLEADINGS

7.1.1 FORM OF DOCUMENTS PRESENTED FOR FILING IN PROBATE MATTERS

A. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

B. All persons filing as self-represented shall file with the court a separate verified declaration regarding his or her residence address, if the residence is not the address of record in the proceeding.

C. When a petition or other request for relief is presented to the court, the Probate Code section that allows the requested relief must appear below the title of the pleading.

D. If a beneficiary, heir, child, spouse, or registered domestic partner in any action before the Probate Court is deceased, that person's date of death shall be included in the petition.

E. When any document is filed for which a hearing is requested, an extra copy of the first page of the pleading shall be provided to the Clerk.

F. A proposed Order shall be submitted with all pleadings that request relief. If the proposed Order is not received in the Probate Filing Clerk's office ten days before the scheduled hearing, a continuance may be required.

G. All documents relating to a matter set for hearing shall have the hearing date, time and department set forth on the face of the document.

H. All documents containing attachments, schedules or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court.

(Rule 7.1.1 renumbered effective January 1, 2006; adopted as Rule 70.1 effective July 1, 2004)

7.1.2 FILING FEES FOR TRUST MATTERS

All initial proceedings for court supervision of trusts (including but not limited to testamentary trusts funded by a probate) and Petitions to Establish Special Needs Trusts are new actions, and require assignment of a new case number and payment of a current filing fee.

(Rule 7.1.2 renumbered effective January 1, 2006; adopted as Rule 70.2 effective January 1, 2004)

(Rule 7.1 renumbered effective January 1, 2006; adopted as Rule 70 effective July 1, 1992)

RULE 7.2 PROBATE APPEARANCES

7.2.1 APPEARANCE REQUIREMENTS

Court appearances are required at all hearings unless the matter has been recommended for approval (see Rule 7.3). When an appearance is required, local attorneys or unrepresented parties are expected to appear in person, absent unusual circumstances.

(Rule 7.2.1 renumbered effective January 1, 2006; adopted as Rule 71.1 effective January 1, 2004)

7.2.2 TELEPHONIC APPEARANCES

Out-of-town attorneys or parties may appear by "Court-Call," by making prior arrangements with the private company that administers the program. Those who plan to appear by Court-Call must notify the court at least 24 hours before the court hearing. Court Call may be arranged by calling (888) 882-6878.

(Rule 7.2.2 renumbered effective January 1, 2006; adopted as Rule 71.2 effective January 1, 2004)

(Rule 7.2 renumbered effective January 1, 2006; adopted as Rule 71 effective July 1, 1992)

RULE 7.3 PRE-APPROVED MATTERS/PROBATE EXAMINERS

A. All matters set for hearing are reviewed in advance by Probate Examiners. If the matter is submitted properly, if all procedural requirements have been satisfied, and if the matter does not require discretionary consideration by the Probate Judge, the matter will be pre-approved, and a court appearance will be unnecessary.

B. The telephone "Hot-Line" is recorded daily at 12 Noon, and contains a list of pre-approved and continued cases on the next day's calendar. The telephone number is (559) 263-8799.

C. Pre-approved matters are called by the court at the time set for hearing. If there are no objections, and if the Probate Judge approves, the Order will be signed at that time. If someone appears at the hearing to object, or if the Probate Judge does not approve the petition, a new hearing date will be set and a copy of the minute order will be mailed to the moving party or attorney.

D. A copy of the Probate Examiner Notes on all non-confidential matters is available upon request.

E. If a matter is not pre-approved due to procedural irregularities, parties may submit to the Probate Filing Clerk additional documents to cure the irregularities or omissions, up to 24 hours before the hearing. Any additional documents received less than 24 hours before the hearing may not be considered by the court, and the matter may need to be continued.

(Effective January 1, 2009, Rule 7.3 renumbered effective January 1, 2006; adopted as Rule 72 effective January 1, 2004)

RULE 7.4 CONTINUANCES

7.4.1 REGULARLY CALENDARED MATTERS

On the call of the calendar, matters not ready for hearing shall be continued by the court. The length of continuance shall be determined upon the facts and size of the calendar. A matter is considered not ready for hearing if notices, supplements, or other documentation curing all discrepancies, other than strictly court-determined matters, are not submitted to the Probate Examiner's Office at least twenty-four (24) hours in advance of the hearing date. If the matter is not ready on the continued date, it may be ordered off calendar or may be denied without prejudice unless a request for continuance is granted by the court upon the personal appearance by counsel or the petitioner, if self-represented.

(Rule 7.4.1 renumbered effective January 1, 2006; adopted as Rule 73.1 effective January 1, 2004)

7.4.2 OBJECTIONS

The court may continue a matter so that written objections may be filed. When a matter has been continued to allow written objections, they shall be filed and served on all interested parties no later than five (5) days prior to the continued hearing date, unless otherwise ordered by the court.

(Rule 7.4.2 renumbered effective January 1, 2006; adopted as Rule 73.2 effective January 1, 2004)

7.4.3 LIMITATIONS ON CONTINUANCES

Status hearings and hearings for 30-day review of ex-parte temporary guardianship or conservatorship orders may not be continued except by the judge at the time of hearing. For all other matters, Probate Examiners may, upon a showing of good cause, grant a maximum of two continuances on any particular matter. Any further continuances must be made in court at the time set for hearing.

(Rule 7.4.3 renumbered effective January 1, 2006; adopted as Rule 73.3 effective January 1, 2004)

7.4.4 NOTIFICATION OF PARTIES

A party obtaining a continuance shall notify all parties who have received notice of the hearing by close of business the day prior to the hearing and shall pay the costs of any person who appears who was originally noticed but was not noticed of the continuance. Confirmation of the continuance and method of notification of parties shall be made to the court in a letter prior to the original hearing date.

(Rule 7.4.4 renumbered effective January 1, 2006; adopted as Rule 73.4 effective January 1, 2004)

7.4.5 RESETTING A MATTER TAKEN OFF CALENDAR

If a Petition has been taken off calendar, it may be re-set for hearing by filing a new Notice of Hearing form, entitled "RESET Notice of Hearing." Reference shall be made to the original hearing date, and the new Notice shall be served in the same manner as that required for the original hearing.

(Rule 7.4.5 renumbered effective January 1, 2006; adopted as Rule 73.5 effective January 1, 2004)

(Rule 7.4 renumbered effective January 1, 2006; adopted as Rule 73 effective January 1, 2004)

RULE 7.5 STATUS HEARINGS AND STATUS REPORTS

A. If a trustee or a court appointed Personal Representative, Guardian, or Conservator fails to timely file a required account,

report, or petition for distribution, the court will set the matter for Status Hearing. Appearance at the hearing is mandatory for parties and counsel.

B. In all matters set for Status Hearing, (except as provided in the following paragraph) verified Status Reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the Status Hearing, together with a copy of the Status Report shall be served on all necessary parties. Failure to comply with any part of this rule may result in the immediate imposition of sanctions.

C. If the required account, report, or petition for distribution is filed at least 10 days before the date set for the Status Hearing, no Status Report is required. The filing party shall notify the Probate Filing Clerk or Probate Examiner, in writing or via FAX that the necessary documents have been filed and the date of the hearing thereon. Upon such timely notification, the Status Hearing will be taken off calendar.

(Effective January 1, 2008, Rule 7.5 renumbered effective January 1, 2006; adopted as Rule 74 effective January 1, 2004)

RULE 7.6 ORDERS

7.6.1 FORM OF ORDERS

A. All orders or decrees in probate matters must be complete in themselves. Orders shall set forth all matters ruled on by the court, the relief granted, and the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. Monetary distributions must be stated in dollars, and not as a percentage of the estate.

B. No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

C. All orders distributing property and orders settling accounts shall contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

D. Probate orders shall be drawn so that their general effect may be determined without reference to the petition on which they are based.

E. In no case shall any material appear after the signature of the judge.

F. Some portion of the contents of the order must appear on the page upon which the judge's signature is affixed.

(Rule 7.6.1 renumbered effective January 1, 2006; adopted as Rule 75.1 effective January 1, 2004)

7.6.2 PRE-APPROVED ORDERS

Orders on uncontested matters may be approved by the court at the time noticed for hearing. A copy of the signed order will be immediately available to appearing counsel. Unrepresented parties may obtain a copy of the order at the Probate Filing Clerk's office after 1:00 p.m. on the day of the hearing.

(Rule 7.6.2 renumbered effective January 1, 2006; adopted as Rule 75.2 effective January 1, 2004)

7.6.3 ORDERS CORRECTING CLERICAL ERRORS

A. If, through inadvertence, the signed order is incorrect, and such inadvertence is brought to the attention of the court by written ex parte petition, the court will sign a new, correct order that relates back to the date of the original order (nunc pro tunc).

B. If the nunc pro tunc order does not restate all of the terms of the original order, it shall be substantially in the following form: "Upon consideration of the petition of (name of declarant) to correct a clerical error, the (title and date of mistaken order) is corrected by striking the following: (incorrect sentence or paragraph) and by substituting the following: (correct sentence or paragraph)."

C. A complete sentence or paragraph shall be stricken, even if it is intended to correct only one word or a single figure. Reference shall be made to page and line numbers of the order being corrected.

(Rule 7.6.3 renumbered effective January 1, 2006; adopted as Rule 75.3 effective January 1, 2004)

(Rule 7.6 renumbered effective January 1, 2006; adopted as Rule 75 effective January 1, 2004)

RULE 7.7 EX PARTE PROCEEDINGS

A. All ex parte petitions requesting that notice be dispensed with must be presented to the Probate Examiner's Office for review. The court may grant or deny an ex parte request, or may set the matter for hearing and require notice to appropriate parties.

B. No testimony is taken in connection with ex parte applications in the probate department, so the application must contain facts sufficient to justify the relief requested. The facts stated in each declaration shall be set forth with particularity. Each declaration shall show affirmatively that the declarant can testify competently to the facts stated therein. The declarant may be any person who has knowledge of the facts. The application and declarations must be verified.

C. All ex parte applications shall be accompanied by a separate order complete in itself. It is not sufficient for such an order to state that the application has been granted, or that the sale of property as set forth in the application has been approved.

D. Requests to dispense with accountings will not be considered ex parte.

E. Petitions for Final Distribution on Waiver of Account or Accountings on Waiver of Notice may not be submitted ex-parte, but shall be placed on the court's regular calendar.

(Effective January 1, 2008, Rule 7.7 renumbered effective January 1, 2006; adopted as Rule 76 effective January 1, 2004)

RULE 7.8 BLOCKED ACCOUNTS

7.8.1 GENERAL PROVISIONS

A. Notice and Hearing. A petition seeking to deposit funds or securities into a blocked account in a financial institution or trust company may be granted by the court ex parte.

B. Title to Account. The order as well as the title to the blocked account shall show the name of the minor, conservatee, or estate and shall state that the account is "blocked" and that no withdrawals of principal or interest shall be made without the prior written order of the court.

C. Account Requirements. All cash deposits into blocked accounts shall be into federally insured, interest bearing accounts.

D. Maximum in Blocked Accounts. In no event shall assets exceeding the maximum insured amount be held in any one federally insured depository. If it becomes necessary to transfer funds to an additional federally insured depository to comply with this rule, a request to transfer such funds may be submitted to the court on ex parte application, and the transfer shall be by an interbank or other direct transfer transaction unless otherwise approved or ordered by the court.

E. Separate Petitions and Blocked Accounts for Each Minor. A separate petition shall be filed for each minor whose funds are to be deposited into a blocked account. A separate blocked account shall be established for the funds of each minor.

F. Withdrawals. Withdrawals from a blocked account may be requested by ex parte application using the appropriate Judicial Council form. In all cases, sufficient documentation to support the requested withdrawal must be submitted with the application, including copies of bills, statements, or letters related to the request.

G. Notice. The court in its discretion may require a noticed hearing, even if the request to withdraw funds is submitted ex parte.

H. Direct Payment. If the withdrawal is granted, the order shall provide that payment will be made directly to the vendor or service provider and not to the applicant, unless the withdrawal is for reimbursement of an expense already paid by the applicant.

I. Court Policy. Absent a showing of good cause, it is the policy of the court to block all funds in Guardianship Estates.

(Rule 7.8.1 renumbered effective January 1, 2006; adopted as Rule 77.1 effective January 1, 2004)

7.8.2 ACCOUNTING REQUIREMENTS FOR BLOCKED ACCOUNTS

A. If a guardianship of the estate is established and the court orders that all assets are to be deposited in a blocked account, the guardian shall file an inventory and appraisal within ninety (90) days of appointment and thereafter file a first account one (1) year after date of appointment. The petition on the first account may include a request that the court dispense with further accountings until the guardianship is terminated.

B. If the guardian of the estate requests authority to deposit the minor's funds into a blocked brokerage account to allow greater flexibility in investments, the court will not dispense with accountings but will continue to require annual and biennial

accountings even though all assets are blocked.

(Rule 7.8.2 renumbered effective January 1, 2006; adopted as Rule 77.2 effective January 1, 2004)

7.8.3 WITHDRAWALS FROM MINOR'S BLOCKED ACCOUNT DURING MINORITY

A. With the exception of withdrawals to pay taxes on a minor's funds, requests to withdraw funds will ordinarily be denied if either or both parents are living and financially able to pay the requested expenditure. An application to withdraw funds to pay income taxes on the minor's funds shall include a breakdown of state and federal taxes due and any costs of preparation. An application to withdraw funds for purposes other than payment of taxes shall be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. A statement regarding the minor's employment and income, if any, shall also be attached. If the request is for multiple items, each item must be listed separately, with its cost.

B. If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement shall be attached to the application showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement shall not be entered into before obtaining a court order. A casualty insurance quote shall be attached to the application showing public liability coverage for limits of at least $100,000.00 per person and $300,000.00 per accident or policy limits equal to the funds which will remain on deposit after the purchase, whichever is greater. The application shall contain an explanation of who will pay for the insurance. A copy of the minor's current report card; a statement as to who will pay for the automobile's maintenance; and a statement of the current availability of public and alternate transportation shall also be submitted.

C. If the request for withdrawal pertains to medical or dental care, including orthodontia, a statement from the doctor, dentist or orthodontist regarding the need for the treatment to be performed and the cost of the treatment shall be submitted, together with a declaration by the applicant explaining why the expense is not covered by insurance.

D. Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor.

(Rule 7.8.3 renumbered effective January 1, 2006; adopted as Rule 77.3 effective January 1, 2004)

(Rule 7.8 renumbered effective January 1, 2006; adopted as Rule 77 effective January 1, 2004)

RULE 7.9 PUBLICATION

A. If the decedent resided or owned property within the city limits of the following cities, publication shall be made as follows:

If the residence or property owned was in	Publish in
Fowler	Fowler Ensign
Fresno	Fresno Bee, or Fresno Business Journal
Kerman	Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal, or Mendota Times
Prather	Mountain Press
Reedley	Reedley Exponent
Sanger	Sanger Herald
San Joaquin	Westside Advance
Selma	Selma Enterprise

B. If the decedent lived outside the city limits of the cities listed above, or anywhere else within the County of Fresno, publication shall be in the Fresno Bee or the Fresno Business Journal. This includes but is not limited to the following areas: Auberry, Big Creek, Biola, Cantua Creek, Caruthers, Centerville, Clovis, Coalinga, Del Ray, Dunlap, Friant, Firebaugh, Five Points, Huron, Kings Canyon, Laton, Miramonte, Orange Cove, Parlier, Piedra, Pinedale, Raisin City, Shaver Lake, Squaw Valley, Tollhouse, or Tranquility.

(Effective January 1, 2009, Rule 7.9 renumbered effective January 1, 2006; adopted as Rule 78 effective January 1, 2004)

RULE 7.10 LETTERS FOR MULTIPLE REPRESENTATIVES

When more than one person is appointed as guardian, conservator, or personal representative, the names and signatures of all

appointed persons shall appear on each copy of the Letters to be issued by the Clerk.

(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

7.10.1 DUTIES AND LIABILITIES

The birth date and driver's license number, if any, of a personal representative (other than public entities or trust companies) shall be provided in the receipt of acknowledgement of duties and liabilities as required by Probate Code section 8404. This information shall be kept confidential and shall not be made available for public inspection without a court order.

(Effective January 1, 2006, New)

(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

RULE 7.11 INVENTORY AND APPRAISAL

7.11.1 DEFINITIONS

A "Final" Inventory and Appraisal may be submitted as a complete inventory of all estate assets, or may be filed after the filing of a partial inventory.

A "Partial" Inventory describes only a portion of the known estate assets, and should be identified as "Partial #1," #2, etc.

A "Supplemental" Inventory contains assets discovered or received after a Final Inventory and Appraisal has been filed.

A "Corrected" Inventory supersedes and completely restates an original inventory (final, partial or supplemental) and should show the total inventory amount as amended.

(Rule 7.11.1 renumbered effective January 1, 2006; adopted as Rule 80.1 effective January 1, 2004)

7.11.2 INVENTORY DESCRIPTION OF REAL PROPERTY

The Inventory and Appraisal shall describe real property by legal description, street address (if any), whether improved or unimproved, and any assessor's parcel number. The Inventory must identify the estate's interest in the property by percentage of ownership, and how title was held (i.e., joint tenancy, community property, sole and separate property, etc.)

(Rule 7.11.2 renumbered effective January 1, 2006; adopted as Rule 80.2 effective January 1, 2004)

(Rule 7.11 renumbered effective January 1, 2006; adopted as Rule 80 effective January 1, 2004)

RULE 7.12 PETITIONS FOR DISTRIBUTION

7.12.1 LISTING OF PROPERTY TO BE DISTRIBUTED

A petition for distribution must list and describe in detail all property to be distributed. The description shall include cash on hand. Promissory notes must be described as secured or unsecured. If secured, the security interest must be described. The legal description and APN of all real property must be included. Description in the petition of any asset by reference to the inventory is not acceptable.

(Rule 7.12.1 renumbered effective January 1, 2006; adopted as Rule 81.1 effective January 1, 2004)

7.12.2 CHARACTERIZATION OF PROPERTY TO BE DISTRIBUTED

A petition for distribution must describe the character of the property, whether separate or community. If some portion of the estate consists of community property, the petition must show whether the interest to be distributed is the decedent's one-half (1/2) interest in the community property or the community property of both spouses.

(Rule 7.12.2 renumbered effective January 1, 2006; adopted as Rule 81.2 effective January 1, 2004)

7.12.3 DISTRIBUTION OF PERSONAL EFFECTS

The court will not order distribution of personal property, such as furniture, vehicles, or appliances, in undivided interests without the written consent of all distributees.

(Rule 7.12.3 renumbered effective January 1, 2006; adopted as Rule 81.3 effective January 1, 2004)

7.12.4 DISTRIBUTION OF REAL PROPERTY

A. The court will not order distribution of real property in undivided interests absent the written consent of all distributees.

B. Parties requesting distribution of real or personal property in undivided interests to a minor must first submit a detailed declaration documenting the need therefore and why it would be in the child's best interest.

(Effective January 1, 2008, New)

7.12.5 DISTRIBUTION TO INTER VIVOS TRUSTS

If property in the estate is to be distributed to a pre-existing trust, the current trustee must file a declaration setting forth the name of the trust, its establishment date, taxpayer identification number, verifying that the trust is in full force and effect, and that the trustee has an executed copy of the trust in possession.

(Effective January 1, 2008, Rule 7.12.4 effective January 1, 2006; adopted as Rule 81.4 effective January 1, 2004)

(Rule 7.12 renumbered effective January 1, 2006; adopted as Rule 81 effective January 1, 2004)

RULE 7.13 WAIVER OF ACCOUNTING IN PROBATE ESTATES

A petition requesting distribution on a waiver of accounting shall include the current status of all inventoried items. The petition must include a list of the property on hand for distribution as it exists at the time of the petition and not merely as shown on the inventory and appraisal, unless there has been no change.

(Rule 7.13 renumbered effective January 1, 2006; adopted as Rule 82 effective January 1, 2004)

RULE 7.14 DISCLAIMERS AND ASSIGNMENTS IN PROBATE ESTATES

A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. An assignment of a beneficiary's interest in a probate estate shall be filed prior to the hearing on a petition for distribution of the beneficiary's interest.

(Rule 7.14 renumbered effective January 1, 2006; adopted as Rule 83 effective January 1, 2004)

RULE 7.15 CONSERVATORSHIPS AND GUARDIANSHIPS

7.15.1 INVESTIGATION COSTS

Unless investigation fees are waived due to hardship per Probate Code section 1851.5 or 1513.1, the court will assess fees for the cost of investigations in guardianship and conservatorship cases. Investigation fees in guardianship matters will usually be waived if the fee for filing the initial petition was waived. Petitioners in guardianship cases who do not qualify for waiver of investigation fees may request permission from the managing investigator to make monthly payments due to hardship. Bills will be sent to conservators and guardians or parents, and copies will be sent to their attorneys.

Upon receipt of the bill, payment is required within thirty days to:

Fresno County Superior Court

1999 Tuolumne Street, Suite 501

Fresno, CA 93721

Attention: Probate

(Effective January 1, 2009, Rule 7.15.1 renumbered effective January 1, 2006; adopted as Rule 84.1 effective January 1, 2004)

7.15.2 INDEPENDENT POWERS

It is the policy of the court to grant a guardian or conservator only those independent powers necessary in each case to administer the estate. A request for all powers described in Probate Code §2591 will not be granted by the court. Each independent power requested must be justified by, and narrowly tailored to the specific circumstances of that case. Any powers so granted must be specified in the order and in the Letters of Guardianship or Conservatorship.

(Rule 7.15.2 renumbered effective January 1, 2006; adopted as Rule 84.2 effective January 1, 2004)

7.15.3 TEMPORARY CONSERVATORSHIPS AND GUARDIANSHIPS

A. Filing Procedure. The original and three (3) copies of the Petition for Appointment of Temporary Guardian or Conservator shall be presented to the Clerk for filing.

B. Hearings. The court may require that a hearing be held on any Petition for Appointment of a Temporary Guardian or Conservator, even if submitted ex parte. In each instance, the court will advise counsel or the self-represented petitioner of the need for a hearing.

C. Requirements. The court will generally deny requests for ex-parte appointment of a temporary guardian unless the application establishes that a present emergency exists and that the minor is currently residing with the petitioner. If the minor is residing with a parent and the petitioner believes the child is in danger, a referral should be made to Child Protective Services.

D. Length of Appointment. When granted, ex parte Temporary Guardianships and Conservatorships expire within thirty days, or on the first hearing date, whichever occurs first. If the temporary appointment is extended by the court, amended letters may be issued upon the request of the temporary guardian or conservator.

(Rule 7.15.3 renumbered effective January 1, 2006; adopted as Rule 84.3 effective January 1, 2004)

7.15.4 RECEIPT OF PUBLIC BENEFITS

When the only asset or income of a proposed conservatee or ward is the receipt of public assistance benefits, the court does not require appointment of a conservator or guardian of the estate.

(Rule 7.15.4 renumbered effective January 1, 2006; adopted as Rule 84.4 effective January 1, 2004)

7.15.5 CONSENTS BY NON-ENGLISH SPEAKING PERSONS

Consents signed by non-English speaking persons must be translated into the person's own language, signed, and filed. A translator certification stating that the translation is an accurate representation of the contents of the consent must accompany the foreign language consent.

(Rule 7.15.5 renumbered effective January 1, 2006; adopted as Rule 84.5 effective January 1, 2004)

7.15.6 GUARDIANSHIP OF THE ESTATE

Where appointment of a guardian of the estate is sought for more than one related minor, a separate case number shall be assigned for each minor. If the minors are from the same immediate family, only one filing fee shall be charged. If the petition requests appointment as guardian of the person only, a single petition shall be filed for all sibling minors.

(Rule 7.15.6 renumbered effective January 1, 2006; adopted as Rule 84.6 effective January 1, 2004)

7.15.7 GUARDIANSHIP FILING REQUIREMENTS

A. When a Petition for Appointment of a Guardian is filed, the court will retain the original copy of all documents (except the Notice of Hearing), and will require the following additional copies:

1. Face page and two additional copies of the Petition.

2. Two additional copies of the Guardianship Questionnaire.

3. Two additional copies of the Declaration Under Uniform Child Custody and Jurisdiction Act (UCCJEA).

B. The Guardianship Questionnaire is a local form which is available at 1999 Tuolumne Street, Suite 501, Fresno, CA., or on the court's website.

(Effective January 1, 2009, Rule 7.15.7 renumbered effective January 1, 2006; adopted as Rule 84.7 effective January 1, 2005)

7.15.8 EFFECT OF OTHER PENDING PROCEEDINGS REGARDING THE CHILD

A Petition for Appointment of a Guardian of a minor will not ordinarily be considered if any of the following circumstances exist:

A. A matter involving custody of a child is *presently* pending in the Family Law Court. In such case, a petitioner seeking custody or visitation rights will be instructed to seek joinder in the family law proceeding and request relief from that court. Under emergency conditions, a temporary guardianship may be granted, but only if the child is already in the custody of the proposed guardian.

B. The minor is subject to the jurisdiction of the Juvenile Court.

(Rule 7.15.8 renumbered effective January 1, 2006; adopted as Rule 84.8 effective January 1, 2004)

7.15.9 CONSERVATORSHIP REQUIREMENTS

A. Conservator Video. Before the hearing on the appointment of a conservator, the proposed conservator shall view the videotape entitled "With Heart: Understanding Conservatorship." The videotape is available for viewing at the Probate Clerk's office in Fresno, California under the supervision of the Probate Filing Clerk. A proposed conservator who wishes to view the video must present a valid form of picture identification to the Clerk. Call the Clerk at (559) 263-8700 for viewing times. The proposed conservator shall present a "Proof of Viewing Videotape" form to the court at the time of the initial hearing. A conservator who resides outside of Fresno County may make arrangements to view the videotape through the Court Investigator's Office of any county of this state.

B. Sale of Conservatee's Residence and Exclusive Listings for Sale. Petitions for authority to sell the conservatee's residence must be set on the regular probate calendar. Request for authorization to execute an exclusive listing agreement may be submitted ex parte.

C. Appointment of Successor Conservator. If the Petitioner and the proposed successor conservator are not the same person, the petition must specifically allege that the petitioner met and conferred with the person being nominated for appointment as successor conservator and that the person agrees to accept appointment as successor conservator. Notice must be mailed to the proposed successor conservator.

(Effective January 1, 2008, Rule 7.15.9 renumbered effective January 1, 2006; adopted as Rule 84.9 effective January 1, 2004)

7.15.10 COMPENSATION OF COURT-APPOINTED ATTORNEY

A. Source of Payment. At the time of appointment, the Order Appointing Counsel shall indicate whether the attorney is to be paid by the conservator of the estate, by the person represented, or by the County of Fresno at the court rate.

B. Payment by Conservator of Estate or Person Represented. If the conservatee or person represented has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall file a petition for compensation, including a complete statement of the services rendered and a detailed breakdown of the hours spent, the hourly rate and the total amount requested for such services. Notice of the hearing shall be given pursuant to Probate Code §1460.

C. Payment by County. If the conservatee or person represented does not have the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall request payment by filing the form entitled "Application and Order for Payment of Attorney's Fees" which is available from the Probate Filing Clerk. The application shall be accompanied by:

1. A complete statement of the services rendered, including the date, hours spent and narrative description of the services rendered, and

2. A detailed breakdown of all expenses paid, if any, including photocopies of receipts.

The application may be submitted to the Probate Filing Clerk, Room 402, for delivery to the Clerk designated to review and process the application. Questions regarding content and requirements may be directed to the Clerk prior to submission of the application. The attorney may thereafter file a separate ex parte application to be submitted to the Probate Judge for discharge as attorney of record for the conservatee or person represented.

D. Payment to Counsel for LPS Conservatee. If private counsel is appointed to represent an LPS conservatee or proposed LPS conservatee and the person has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the petition for compensation shall be filed in the LPS proceeding following the guidelines set forth in subsection (B) above. If a conservator of the estate has been appointed, the petition should include the case number of the estate proceeding, if known to the court-appointed attorney. The court shall order the conservator of the estate or, if none, the person, to pay in any manner the court determines to be reasonable and compatible with the person's financial ability.

(Rule 7.15.10 renumbered effective January 1, 2006; adopted as Rule 84.10 effective January 1, 2004)

(Rule 7.15 renumbered effective January 1, 2006; adopted as Rule 84 effective January 1, 2004)

RULE 7.16 ATTORNEY'S FEES AND COMMISSIONS IN GUARDIANSHIP AND CONSERVATORSHIP

A. Attorney fees and commissions in guardianship and conservatorship matters are awarded based upon what is just and reasonable. Except as set forth in Rule 7.16 (B), below, an attorney seeking compensation or reimbursement of costs shall comply with California Rules of Court, Rules 7.750 through 7.752.

B. The court will allow a flat fee for attorney services, without the need to comply with Rule 7.16 (A) above, as follows:

1. Establishment of a conservatorship or guardianship and preparation of the first account: $2,000.00.

2. Court confirmed sale of real property: $1,000.00.

3. Attorney-prepared income tax returns: $500.00.

4. Each timely filed subsequent account: $1,000.00 per year.

5. If the account is not timely filed, compliance with Rule 7.16 (A), above, is required.

C. The court will allow a flat fee for guardians and conservators, without the need to comply with Rule 7.16 (A), above, as follows:

1. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

2. Sale of real property: $1,000.00 (court confirmation is not required).

3. Preparation by the guardian or conservator of personal income tax returns for the ward or conservatee: $500.

D. Attorneys, guardians, and conservators may request fees in excess of the flat fees set forth in paragraphs B and C, above, but must comply with the requirements of Rule 7.16 (A), above.

(Effective January 1, 2008, Rule 7.16 renumbered effective January 1, 2006; adopted as Rule 85 effective July 1, 2004)

RULE 7.17 REIMBURSEMENT OF ATTORNEY'S, CONSERVATOR'S, GUARDIAN'S OR PERSONAL REPRESENTATIVE'S COSTS ADVANCED

A. The following costs advanced may be reimbursed to the attorney, conservator, guardian or personal representative without prior court permission:

1. Fees charged by the Clerk of the Court.

2. Newspaper publication fee.

3. Surety bond premiums.

4. Probate referee fees.

5. Court investigator's fees.

B. The following expenses are considered by the court to be part of the cost of doing business, and are not reimbursable costs or fees:

1. Photocopy expense (except as set forth in C below).

2. Local telephone charges.

3. Computer research fees.

4. Secretarial services.

5. Travel to and from court.

6. Communications with Probate Examiners.

7. Runner services.

C. Requests for reimbursement of allowable costs must be supported by itemized declarations and are subject to the court's discretion. Allowable costs include but are not limited to:

1. Postage and photocopy expense when more than ten people are entitled to notice.

2. Necessary use of alternative delivery services: i.e., UPS, Fed-Ex, wire transfer.

(Effective January 1, 2008, Rule 7.17 renumbered effective January 1, 2006; adopted as Rule 86 effective January 1, 2004)

RULE 7.18 EXTRAORDINARY FEES IN DECEDENT'S ESTATES

A. The court will allow the following amounts as extraordinary fees for attorneys without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Court confirmed sales of real property: $1,000.00.

2. Attorney-prepared Federal Estate Tax return: $2,000.00.

3. Attorney-prepared Estate Income Tax return: $500.00.

B. The court will allow the following amounts as extraordinary fees for personal representatives without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Sales of real property: $1,000.00.

2. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

3. Personal-representative prepared Federal Estate Tax return: $2,000.00.

4. Personal-representative prepared Estate Income Tax return: $500.00.

(Effective January 1, 2008, Rule 7.18 renumbered effective January 1, 2006; adopted as Rule 87 effective January 1, 2004)

RULE 7.19 TRUSTS, SPECIAL NEEDS TRUSTS AND SUBSTITUTED JUDGMENTS

A. A copy of the proposed trust instrument shall be attached to the petition.

B. Trusts funded by court order in Fresno County must comply with California Rules of Court 7.903 and must require court confirmation of sales of trust real property.

C. A petition to approve the establishment of a trust for a conservatee should include a recommendation for the amount of bond to be posted by the proposed trustee and for termination of the conservatorship estate. Following termination of the conservatorship of the estate, new Letters shall issue for the conservatorship of the person only. Prior to granting a petition to establish a trust, the court will require that a final accounting be filed by the conservator. Thereafter, all trust accountings shall be filed in a new Trust file, and a filing fee shall be payable upon the filing of each account.

D. Trusts created by the court shall be subject to the court's continuing jurisdiction unless otherwise specified, and shall be subject to periodic accounts as are required in guardianship and conservatorship matters.

E. When a trust is subject to continuing court supervision, no payment of fees to attorneys, trustees, or others may be made without prior court approval.

(Effective January 1, 2008, Rule 7.19.2 renumbered effective January 1, 2006; adopted as Rule 88.2 effective January 1, 2004)

(Rule 7.19 renumbered effective January 1, 2005; adopted as Rule 88 effective January 1, 2004)

(Chapter 7 amended effective January 1, 2006; adopted as VII effective July 1, 1992)

APPENDIX E: PROBATE
APPENDIX E1

Attorney/Bar Number:

Address:

City:

Phone: Fax:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

In the matter of	)	No.
	)	
	)	
	)	AGREEMENT TO SUBMIT
	)	DISPUTE TO A TEMPORARY
	)	JUDGE AND ORDER THEREON
	)	
	)	
_____	)	

"Party 1" and "Party 2" agree as follows:

1. There is a dispute between "Party 1" and "Party 2" relating to the

_____

_____.

(the "Petition") filed by "Party ___" and now set for hearing on (date) _____ in Department ___ of this Court at ____ a.m.

2. The dispute involves the following issues ("Issues"): (Describe issues: e.g.)

a. _____
The correctness of the First Account Current

_____
including receipts and disbursements reflected therein:

b. _____
The correctness of values in the inventories filed in these proceedings

c. _____
Surcharge against Personal Representative and/or counsel for Personal Representative for losses

_____
to the Estate by reason of alleged failure of the Personal Representative and/or his counsel

_____
to exercise ordinary care and diligence in managing and controlling the estate.

d. _____
Proper computation of statutory fees and commissions

(If additional space needed, please attach Exhibit A.)

3. "Party 1" and "Party 2" have agreed to resolve the Issues by referring the dispute to a temporary judge, for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)];

4. The parties acknowledge that they have received a copy of the Fresno County Probate Policy relating to the Probate Code section 9620(a) [or section 2405(a)] procedure and its exhibits and have read it and agree to be bound by all terms of the Policy and its exhibits;

5. The parties hereto agree that the temporary judge shall proceed promptly to hear and determine the Issues in controversy by summary procedure, without further pleadings or discovery. The decision of the temporary judge shall be subject to section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision of the temporary judge, and shall be as valid and effective as if rendered by a judge of this Court in an action between the parties.

DATED: _____ _____
"Party 1"

DATED: _____ _____
"Party 2"

ORDER REFERRING DISPUTE FOR
SUMMARY DETERMINATION PER AGREEMENT

IT IS HEREBY ORDERED that, pursuant to the agreement of "Party 1" and "Party 2," the issues set forth in said agreement are hereby referred to _____, as temporary judge for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)], and the Fresno County Probate Policy for Short-Cause Contested Probate Matters.

DATED: _____ _____
Judge of the Superior Court

Judge of the Superior Court

Appendix E1 (Rev 7-1-99)

APPENDIX E2

ATTORNEY APPLICATION FOR APPOINTMENT
TO PROBATE REFERENCE PANEL

I, _____, apply for appointment to the Probate Reference Panel.

1. I was admitted to practice law in the State of California in (year) _____.

2. I agree to comply with the terms of the eligibility requirements, including but not limited to the following.

a. I have read the eligibility requirements for panel members, and I meet those requirements.

b. I acknowledge ethical conflict of interests rules apply. I will review my position with respect to each particular appointment. I agree to advise the parties immediately if a conflict exists or arises.

c. I have read and agree to comply with all applicable sections of Fresno Superior Court Local Rules, Probate Policy Memorandum.

3. I speak the following foreign languages: _____

4. I have been subject to a State Bar disciplinary proceeding:

Yes: _____ No: _____

If you answered "Yes," please explain: _____

_____

5. If at any time while I am a member of this panel my status as a member of the State Bar changes, I agree to notify the Court, in writing within 10 days of that change.

6. I do not wish to serve as temporary judge in these types of matters:

_____conservatorships and guardianships

_____probate administration

_____trust administration

_____selection of fiduciaries

_____surcharge actions

_____accounting disputes

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

Dated: _____ Signed: _____

Name: _____

Address: _____

_____

Telephone: _____

Facsimile: _____

APPENDIX E3

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

In the matter of	)	Case No.
	)	
	)	
	)	"PARTY 1'S" BRIEF OF REFERENCE HEARING BEFORE _____, TEMPORARY JUDGE
	)	
	)	
	)	
_____	)	

"Party 1" submits the following pursuant to reference under Probate Code Section 9620(a) [or Section 2405(a)] with respect to the hearing now set for (date) _____ before (name) _____ as temporary judge.

1. Statement of Issues: [Number and identify each issue to be decided. These should coincide with the issues described in the reference Agreement.]

2. Documents: [Make reference to the "Joint Document Binder" previously agreed to by the parties and filed with the reference judge concurrently with this Brief. If there are any "disputes" regarding documents, please identify the document and your position regarding its relevance and admissibility. (These rules, if any, will be resolved at the outset of the hearing.)]

3. Witnesses: [Please list the witnesses whose testimony you will present and briefly describe what each witness will say.]

4. Positions: [Please present a brief and concise statement of your position on each issue, with numbering corresponding to the list of issues in Item 1 above.]

DATED: _____
(Signature)

APPENDIX E*4*

ADDITIONAL USEFUL INFORMATION

1. Service on Foreign Consulates: When service upon a foreign consulate is required, contact information for all registered consulates may be obtained at the following web site: www.state.gov/s/cpr/rls/fco. Click on the release you want, then the foreign consul.

2. Guardianship Assistance: Guardianship self-help packets in Spanish and English are available in the Probate Filing Clerk's office for a nominal fee. The court also offers a Guardianship Clinic to provide assistance and information to self-represented litigants

3. Spanish Self-help Center: The Spanish Self-help Center, sponsored by the court, offers assistance to Spanish-speaking people seeking guardianship.

4. Location of Probate Court: The Clerk's office of the Probate Court is located in 1999 Tuolumne St., Fifth Floor, Fresno, CA. The Probate Court is located in Department 98A at the Juvenile Dependency Court, at 1255 Fulton Mall, Fresno, CA.

(Effective July 1, 2007)

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Glenn County
Probate Rules

Glenn County follows the California Rules of Court in probate matters. For probate matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Humboldt County
Probate Rules

Effective January 1, 2007

CHAPTER 6. PROBATE RULES

6.1. ADDITIONAL REQUIREMENTS

A copy of the petition shall be served with each notice of hearing when served on a person requesting special notice or where the petition is the accounting of a testamentary trustee. Where the fiduciary or attorney is requesting fees or commissions other than those computed by Probate Code §§10800-10810, the notice of hearing and a copy of the petition shall be served on all parties. The proof of service shall show service of the copy of the petition as well as the notice of the hearing.

Rule 6.1 renumbered effective July 1, 2004; previously adopted as Rule 7.1 effective July 1, 1994

6.2. COPIES OF HANDWRITTEN WILLS AND CODICILS; TRANSLATION OF FOREIGN WILLS

A typewritten copy of the will or codicil shall accompany the petition for probate if the document is handwritten. If the document is in a foreign language, it shall be accompanied by a translation signed by the translator together with an affidavit or declaration under penalty of perjury showing the qualifications of the translator.

Rule 6.2 renumbered effective July 1, 2004; previously adopted as Rule 7.2 effective July 1, 1994

6.3. TIME FOR SUBMITTING PAPERS AND ORDERS

All papers relating to a previously set probate hearing, including the proposed order prepared by the moving party, shall be filed or lodged with Court Operations at least five (5) court days before the date of the hearing.

Rule 6.3 renumbered effective July 1, 2004; previously adopted as Rule 7.3 effective July 1, 1994

6.4. UNCONTESTED MATTERS

Appearance of Counsel. Except as otherwise provided by law, all verified petitions in probate matters shall be deemed submitted without an appearance except, that the petitioner or the petitioner's attorney shall appear on a petition for confirmation of sale of (1) real property, or (2) personal property valued in excess of $1,000.00. The petitioner or the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator, unless waived by the Court. As used in this rule, "verified" means verified by the petitioner. Before denying any petition where there is no appearance under this rule, the Court will continue the matter one week or until the next succeeding calendar, whichever is later, to give the petitioner or petitioner's attorney an opportunity to appear. If there is no appearance or other response by the petitioner or petitioner's attorney at the continued hearing, the Court may drop the matter from the calendar.

Rule 6.4 renumbered July 1, 2004; previously adopted as Rule 7.4 effective July 1, 1994

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Imperial County
Probate Rules

Effective January 1, 2010

CHAPTER 7

PROBATE RULES

7.0 Caption of Petitions

7.1 Appearances

7.2 Probate Examiner

7.3 Hearings

7.4 Order for Family Allowance

7.5 Independent Administration

7.6 Fees Stated When Account Waived

7.7 Non-Statutory Fees and Commissions

7.8 Fees for Conservators and Attorneys

7.0 Caption of Petitions

The caption of a petition shall be all-inclusive as to the order sought so that the matter may be properly calendared and posted, and any filing fees determined. If any part of the estate is to be distributed to a trust, the caption shall so indicate.

[Adopted, effective July 1, 2007]

7.1 Appearances

Appearances are required on all petitions for appointment of conservators/guardians, confirmation of sale of real of personal property and any petition to which objection has been filed. All other petitions may be pre-approved by the Probate Examiner, with no appearance required, if an order is received by the Court prior to the hearing. However, if an interested person appears and objects and the Court determines that an appearance is necessary by Counsel, the matter may be continued. No notice of continued hearing date will be mailed by the Court; it is the responsibility of Counsel to determine whether the matter has been approved or continued.

[Adopted, effective July 1, 2007]

7.2 Probate Examiner

Counsel may telephone the Probate Examiner's Office to determine if there are any defects in the file two days prior to the hearing.

[Adopted, effective July 1, 2007]

7.3 Hearings

All probate matters are heard on Friday of each week at 8:30 a.m. in the assigned probate department. The hearing date is scheduled by counsel and required to be on all notices of hearing at the time of filing thereof. The Court does not schedule the date of any hearing or mail notices of any hearings.

[Adopted, effective July 1, 2007]

7.4 Order for Family Allowance

The duration of an order for family allowance is limited to six months if no inventory and appraisement has been filed, and is limited to one year if an inventory ad appraisement has been filed.

[Adopted, effective July 1, 2007]

7.5 Independent Administration

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Probate Code, Section 10400), the following polices shall apply:

(a) The original of the notice of proposed action and proof of mailing or personal delivery of the notice shall be filed with the Court.

(b) In any accounting or petition for distribution, the personal representative shall report all acts taken without court authorization, approval, confirmation, or instruction that would be required if authority to administer the estate under the Independent Administration of Estates Act had not been granted ("independent acts"). With respect to each independent act, the personal representative shall state whether notice of proposed action was not given, the personal representative should allege whether such notice was not required or waived. Independent acts reported in a prior noticed petition need not again be reported in a later petition.

(c) If no independent acts have been taken during administration, this fact should be stated in the petition for final distribution.

[Adopted, effective July 1, 2007]

7.6 Fees Stated When Account Waived

In accounts, or in petitions for distribution accompanied by waiver of accounting, the report must state the amount of the personal representative's commissions payable as well as the amount of the attorney's fees and the basis for calculation thereof. When income is included in the basis for calculation, even though the accounting is waived, a detailed schedule of income must be presented.

[Adopted, effective July 1, 2007]

7.7 Non-Statutory Fees and Commissions

(a) A petition for services other than statutory compensation rendered in a probate or other proceeding shall include:

(1) A declaration by the attorney, personal representative, trustee or other fiduciary of the services rendered or to be rendered by each of them itemizing their services by date, time, and service rendered;

(2) The sum requested for each item of service, together with the total amount requested for such services (and not merely "reasonable fees"); and

(3) A reference in the caption and prayer to the additional fees.

(b) In determining such fees, the Court shall consider the difficulty of the tasks performed, the reasonable value of time expended, the amount of the estate accounted for, and whether an accounting is waived.

[Adopted, effective July 1, 2007]

7.8 Fees for Conservators and Attorneys

(a) Petitions for a fee request should be filed with all accountings.

(b) Fees for court appointed attorneys should be requested at the hearing as part of the attorney's report.

(c) Services rendered by conservators and their attorneys must be set forth in a detailed statement of the facts upon which the fee request is based, including a schedule which states: the nature and difficulty of task performed; the results achieved; the benefits to the conservatee or conservatee's estate; a description of each separate service performed; the hours spent; and total amount requested.

[Adopted, effective July 1, 2007]

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Inyo County
Probate Rules

Effective January 1, 2002

Inyo County follows the California Rules of Court in probate matters. Probate matters are scheduled on adult law and motion calendar.

ARTICLE VIII
PROBATE, GUARDIANSHIP, & CONSERVATORSHIP

8.1 PROBATE INVESTIGATOR

Contact information for the Court's Probate Investigator can be obtained by contacting the Court's Administrator at the Courthouse in Independence, CA (Post Office Drawer U Independence, CA 93526), or calling (760) 878-0217.

(Adopted, Effective January 1, 2002)

8.2 PROBATE REFEREE

Information pertaining to the appointment of a Probate Referee can be obtained by contacting the Court's Administrator at the Courthouse in Independence, CA (Post Office Drawer U Independence, CA 93526), or calling (760) 878-0217.

(Adopted, Effective January 1, 2002)

8.3 SETTLEMENT OF MINOR'S CLAIM

The following procedure shall be followed in the settlement of the claim of a minor whether by way of compromise, covenant not to sue, or stipulated judgment ("minor's compromise").

(a) Requests for approval of minor's compromise shall be heard on the Probate Calendar.

(b) The presence of the minor, the parent or guardian of the minor and counsel shall be required unless excused by the Court.

(c) Current medical reports, if the matter is applicable to the physical condition of the minor, giving a diagnosis and prognosis of the minor's condition shall be attached to the petition.

(d) As prescribed by Probate Code §3601, the Court shall award "reasonable attorney's fees." In making such an award, the Court shall consider the factors specified in California case law (See *Niederer v. Ferriera* (1987) 189 CA3d 1485; Witkin's California Procedure Volume 1, page 286, § 226). As a general guideline, claims for attorney's fees that exceed 25% of the net proceeds of the minor's compromise must be supported by a strong showing of reasonableness.

(Adopted, Effective January 1, 2002)

8.4 GUARDIANSHIP FUNDS

As parents are required by statute to support their children, the Court will not permit guardianship funds to be used for the minor's maintenance where one or both parents are living except upon a showing of the parent's financial inability or other circumstances which would justify the Court in departing from this rule in the best interests of the minor. In all cases where guardianship funds are to be used for the ordinary expenses of supporting a minor, and where there is a parent living who has the obligation to support of the minor, the guardian must obtain Court approval prior to the expenditure of funds. A petition for authority to expend funds for support shall be accompanied by a detailed explanation (including financial statements, if necessary) of the parent's inability to support the child.

(Adopted, effective January 1, 2002)

8.5 REQUEST FOR WITHDRAWAL OF FUNDS IN BLOCKED ACCOUNT

(a) All requests or petitions for withdrawal of minor's funds deposited in a blocked account shall be made to the Court. Requests for withdrawal may be presented ex parte and shall be in completed form. A statement shall be presented with the petition verifying the amount of each item of the proposed expenditure.

(b) If the funds requested are for the support and maintenance of the minor and the petitioner is a parent, the parent shall file a declaration showing the parent's financial inability or other circumstances justifying the withdrawal. See Rule 8.4.

(c) No subsequent order for withdrawal will be signed by the Court until the trustee or guardian has complied with the directs of the Court contained in prior withdrawal orders. This means that all supporting vouchers and required certifications and declarations shall be on file with the Clerk.

(Adopted, effective January 1, 2002)

8.6 PUBLIC GUARDIAN FEES

This Court's Standing Order No. 01-003 "Establishing Public Guardian Fees," is incorporated herein by reference as though set forth fully and at length. (See also Rule 2.6 infra)

(Adopted, effective January 1, 2002)

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Kern County
Probate Rules

Effective January 1, 2010

CHAPTER VIII
PROBATE MATTERS

8.1 Settings, Assignments, and Continuances (Effective 7/1/03)

8.2 Orders (Effective 7/1/03)

8.3 Appointment of Executors and Administrators (Effective 7/1/03)

8.4 Sales (Effective 7/1/03)

8.5 Inventory, Accounts, Reports, and Petitions for Distribution (Eff. 7/1/03)

8.6 Attorney Fees and Personal Representative Commissions in Decedent's Estate (Effective 7/1/03)

8.7 Accounts and Reports/Guardianships and Conservatorships (Eff. 7/1/03)

8.8 Guardianships (Effective 7/1/03)

8.9 Conservatorships (Effective 7/1/03)

8.10 Law and Motion And Discovery Matters (Effective 7/1/03)

8.11 Withdrawal of Attorneys of Record (Effective 7/1/03)

8.12 Forms of Documents Presented for Filing (Effective 1/1/06; Rev. 7/1/09; Rev. 1/1/10)

8.13 Obtaining a Hearing Date (Effective 1/1/06; Rev. 1/1/10)

8.14 Consolidation with the Lowest Number (Effective 1/1/06)

8.15 Petition for Confirmation of Trust Assets Pursuant to Estate of Heggstad (Effective 1/1/06; Rev. 7/1/09)

8.16 Trustee Compensation (Effective 1/1/06)

8.17 Attorney Fees (Effective 1/1/06)

8.18 Telephonic Court Appearances in Probate Division (Effective 7/1/09)

CHAPTER VIII
PROBATE MATTERS

8.1 Settings, Assignments, and Continuances (Effective 7/1/03)

8.1.1 Order to Produce Will (Effective 7/1/03)

A petition for an order to produce a will, together with the proposed order, must be submitted to the Probate Department for processing.

(Effective 7/1/03)

8.1.2 Deleted (Effective 1/1/10)

8.1.3 Continuances (Effective 7/1/03)

8.1.3.1 Matters Not Ready for Hearing (Effective 7/1/03; Rev. 7/1/09 Rev. 1/1/10)

On the call of the calendar, matters not ready for hearing normally will be dropped from calendar. A matter is considered not ready for hearing if notices, supplements, proofs of service, or other documentation curing all discrepancies other than strictly court determined matters are not filed prior to 9:00 a.m. at least two (2) court days before the hearing.

(Effective 07/01/03; rev. 1/1/10)

8.1.3.2 Continuances by Stipulation of Counsel (Effective 7/1/03; Rev. 1/1/10)

All Continuances stipulated by Counsel shall be approved by the Court and are subject to appropriate filing fees and/or conditions set forth by the Court. Counsel cannot stipulate to a continuance of less than seven (7) calendar days.

(Effective 7/1/03; rev. 1/1/10)

8.1.4 Mandatory Settlement Policy (Effective 7/1/03)

A Mandatory Settlement Conference is required in any contested probate matter in which the estimated time of hearing is in excess of one (1) day. All Mandatory Settlement Conferences shall be conducted pursuant to California Rules of Court rule 3.1380.

(Effective 7/1/03)

8.2 Orders (Effective 7/1/03)

8.2.1 Ex-Parte Hearings (Effective 7/1/03; Rev. 1/1/10)

Ex Parte Hearings may be set in matters requesting or demonstrating:

1. Harm caused by the passage of time;

2. Harm that one or more persons entitled to notice might do to the proposed ward/ conservatee, including abduction or harm to the proposed ward's/conservatee's estate if notice to those persons is given;

3. The death or incapacity of the proposed ward's custodial parent and the petitioner's status as the custodial parent's nominee;

4. Medical Emergency;

5. Financial Emergency;

6. Personal Knowledge of irreparable harm or immediate danger;

7. Any other instance as approved by a judicial officer.

a. Contents for Filing: The moving party shall file the Ex Parte Application, or Temporary Petition and all accompanying attachments as applicable, with proper case title captioned; the relief requested; a declaration in support of application; compliance declaration; a proposed order and the applicable fees.

b. Notice: Notice shall be given to all counsel, interested parties, and/or all opposing parties, if not represented by counsel, by 10:00 a.m. the court day before the scheduled hearing.

1. Compliance: Compliance of the notice requirements shall be stated and filed on an Ex Parte Compliance Declaration.

c. Submission: All required paperwork for the Ex Parte hearing shall be returned to the court clerk by 12:00 noon the court day before the scheduled hearing.

8.2.2 Material to be Included in Probate Orders (Effective 7/1/03)

(a) Orders shall contain the name of the judge presiding, the date of hearing and the department. All orders or decrees in probate matters must be complete in themselves, in that they shall set forth all matters actually passed on by the court, the relief granted, the names of persons and descriptions of property involved with the same particularity required of judgments in civil matters. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which

they are based.

(Effective 7/1/03)

(b) While in orders setting accounts it is proper to use general language approving the account, the report and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

(Effective 7/1/03)

8.2.3 All Orders for Continuing Payments Must Have a Maximum Time Limit (Effective 7/1/03; Rev. 1/1/10)

The court will not make orders for continuing family allowance payments to run until the further order of the court, but all such orders shall provide that payments shall commence as of a certain date and continue for a period not to exceed a specified number of months.

(Effective 7/1/03; rev. 1/1/10)

8.3 Appointment of Executors and Administrators (Effective 7/1/03)

8.3.1 Special Administration (Effective 7/1/03; Rev. 1/1/06)

(a) A petition for Special Administration of an Estate will not be accepted for filing without concurrent presentation of a Petition for General Administration of the Estate, except upon good cause shown.

(Effective 7/1/03; rev. 1/1/06)

(b) A petition for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, and any other person the court determines to be entitled to notice. (Adopted 1/1/06)

8.3.2 Allegations in Petitions Re Heirs or Beneficiaries (Effective 7/1/03)

(a) The nominated trustee of a trust should be listed as a devisee or legatee and the individual beneficiaries of the trust need not be listed or noticed unless the sole trustee is also the estate representative.

(Effective 7/1/03)

(b) If an heir, devisee or legatee dies after the decedent, and a personal representative has been appointed for said person, the deceased heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the deceased heir, devisee or legatee should be listed as deceased, the fact that no personal representative has been appointed should be alleged, and the known heirs, devisees and legatees of said deceased person should be listed, or if none are known, the last known address of the deceased person should be listed

(Effective 7/1/03)

8.3.3 Wills and Codicils as Exhibits to Petition (Effective 7/1/03; Rev. 7/1/09)

When a Petition for Probate of Will or Codicil, or both, is filed, it shall have attached, where applicable, marked as an exhibit, a copy of the document(s) being offered for probate. If the will or codicil is handwritten, a typewritten copy of the document must also accompany the petition. The original will must be lodged with the court. Exemplified copies of any foreign will lodged elsewhere will be required as an exhibit to the petition.

(Effective 07/01/03; rev. 07/01/09)

8.3.4 Proof of Wills by Affidavit or Declaration (Effective 7/1/03; Rev. 1/1/10)

(a) When Court Appearance Required (Effective 7/1/03)

Written proof as to the admissibility of each testamentary document must be submitted or an appearance is required.

(Effective 7/1/03)

(b) Multiple Testamentary Instruments (Effective 7/1/03)

Each proffered instrument shall be proved by a separate affidavit or declaration.

(Effective 7/1/03)

(c) Deleted (Effective 1/1/10)

8.3.5 Declinations and Consents to Serve (Effective 7/1/03)

(a) It is insufficient to allege merely that the person named in the decedent's will as executor thereof declines to act as such. In addition, a written declination to act, signed by such person, must be filed with the court.

(Effective 7/1/03)

(b) It is insufficient to allege merely that a non-California bank or trust company named as executor is not qualified to act as such in California since it has the right to qualify to do business in California. Instead, its declination to act should be alleged and an executed declination should be obtained and filed.

(Effective 7/1/03)

(c) If a Petition for Letters to be issued to two or more executors is filed in which one or more of the named executors for whom letters are sought is not petitioner, a consent to act, signed by each non-petitioning executor for whom letters are sought, must be filed with the court. (Eff. 7/1/03)

8.3.6 Multiple Representatives (Effective 7/1/03)

When multiple representatives are appointed by an order which directs that letters (testamentary or administration) shall be issued to them, the clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be so provided in the order of appointment. All qualified representatives must execute the same original letters. (Eff. 7/1/03)

8.4 Sales (Effective 7/1/03)

8.4.1 Published Notice for Sale of Real Estate (Effective 7/1/03)

If Notice of Sale is published, any sale must be in accordance with its terms. If a Petition for Confirmation of Sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed and new Notice of Sale must be published unless the court, in its discretion permits a supplement to the petition changing the sale date to a date after the date stated in the published notice, correcting the clerical error. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation.

(Effective 7/1/03)

8.4.2 Sale of Real Property When Buyer Assumes Encumbrance (Effective 7/1/03)

Except under extraordinary circumstances alleged in the report of sale, sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a continuing liability on the encumbrance.

(Effective 7/1/03)

8.4.3 Appearance of Attorney for the Estate Required (Effective 7/1/03)

In Petitions for Confirmation of Sale of Real or Personal Property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney of record except in those cases where the administrator, executor, guardian or conservator is in propria persona.

(Effective 7/1/03)

8.4.4 Conditional Sales of Real Property (Effective 7/1/03)

The court will not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board) unless unusual and extraordinary circumstances exist and the necessity and advantage to the estate are shown to the court.

(Effective 7/1/03)

8.5 Inventory, Accounts, Reports, and Petitions for Distribution (Eff. 7/1/03)

8.5.1 Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)

In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of the administrator's or executor's commissions, and attorney's fees. It must also set forth the estate accounted for and the basis for the calculation.

(Effective 7/1/03)

8.5.2 Description of Distributee (Effective 7/1/03)

(a) The names, ages, relationships and shares of all persons who are affected by the petition must appear in the Petition for Final Distribution. Adult persons may be designated as "adult" or "legal" and for minors, the birth date shall be stated.

(Effective 7/1/03)

(b) If a trust is established in which property will be distributed to a beneficiary upon reaching a given age, the petition must allege the date of birth of the distributee.

(Effective 7/1/03)

8.5.3 Notice to Prior Representative or Attorney (Effective 7/1/03)

If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any probate petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless:

(Effective 7/1/03)

(a) A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;

(Effective 7/1/03)

(b) An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

(Effective 7/1/03)

(c) The file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the court.

(Effective 7/1/03)

8.5.4 Documents to be On File Before Order for Distribution of Minor's Bequest (Effective 7/1/03; Rev. 7/1/09)

When distribution is to be made to a minor, the petition must allege whether distribution is to be made to the court appointed guardian or to other persons under Probate Code Section 3401 or under the Uniform Transfers to Minors Act. All appropriate certified copies of court orders and Letters of Appointment or the original written assurance under Probate Code Section 3401 must be filed with the Petition for Distribution. A Probate Code Section 3909(b) instrument will be required to complete the transfer.

(Effective 07/01/03; rev. 07/01/09)

8.5.5 Decrees of Distribution Establishing Testamentary Trusts (Effective 7/1/03)

Upon Petition for Distribution, the court must determine whether a valid trust has been created by a Will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. The terms of the trust shall be set forth in the petition and decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in the present tense and in the third person rather than quoting the Will verbatim.

(Effective 7/1/03)

8.5.6 Receipts on Distribution (Effective 7/1/03)

Receipts for any property received by a distributee shall be signed by him or her personally. The court will not accept receipts signed by an attorney-in-fact, except where there is a power of attorney.

(Effective 7/1/03)

8.6 Attorney Fees and Personal Representative Commissions in Decedent's Estate (Effective 7/1/03)

8.6.1 Amount of Fees to be Specific (Effective 7/1/03)

In all petitions requesting fees, both ordinary and extraordinary, a specific sum shall be requested, not merely "a reasonable amount".

(Effective 7/1/03)

8.6.2 Basis for Statutory Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)

In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation.

(Effective 7/1/03)

8.6.3 Format for Requesting Extraordinary Fees (Effective 7/1/03)

Application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice to affected parties contain a reference to such application for extraordinary fees. All requests for compensation for services for extraordinary fees must be itemized. (Eff. 7/1/03)

8.6.4 Additional Supporting Documents (Effective 7/1/09)

The court may require production of additional documentation in support of an account by the personal representative in accordance with Probate Code 10901.

(Effective 7/1/09)

8.7 Accounts and Reports/Guardianships and Conservatorships (Eff. 7/1/03)

8.7.1 Personal Property Bond (Effective 7/1/03; Rev. 7/1/09)

Reports of conservators and guardians should reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, and the existence of any facts that justify an additional bond. The report should also show any blocked bank accounts. The report must contain the current address and whereabouts of the conservatee and conservator and describe the conservatee's status and condition.

(Effective 7/01/03; rev. 7/1/09)

(a) All proposed conservators are required to view a court approved video regarding their duties and to file a written acknowledgement that they have done so.

(Effective 07/01/03; rev. 7/01/09)

8.7.2 Additional supporting documents (Effective 07/01/09)

The court may require production of additional documentation in support of an account by the personal representative in accordance with Probate Code 10901.

8.8 Guardianships (Effective 7/1/03)

8.8.1 Appointment of General Guardians (Effective 7/1/03)

Upon filing the petition for appointment of a general guardian, the petitioner shall submit to the Probate Department a proposed order prescribing the notice to be given as required by Probate Code Section 1511. At least fifteen (15) days notice by personal service must be given to the parents, if not petitioning; to the minor, if twelve (12) years or older; and to the persons having custody, if not the parents. Fifteen (15) days notice by mail must be given to all second degree relatives. If petitioner is not a second degree relative, the court may require additional notice to all relatives within the degree to which the petitioner is related

to the minor.

(Effective 7/1/03)

8.8.2 Duties of Guardian—Liability of Parents to Support Child; Educational Purposes. Probate Code Sections 2420, 2422 (Effective 7/1/03)

Parents are required by statute to support their children. The court will not permit guardianship funds to be used for the minor's maintenance, support or education where one or both parents are living, except upon a showing of the parent's financial inability or other circumstances which would justify departing from this rule in the best interests of the minor.

(Effective 7/1/03)

8.9 Conservatorships (Effective 7/1/03)

8.9.1 Appointment of Conservator (Effective 7/1/03)

(a) A Petition for the Appointment of a Temporary Conservator will not be considered unless accompanied by a Petition for the Appointment of a General Conservator.

(Effective 7/1/03)

(b) A Petition for the Appointment of a Conservator must be filed in quadruplicate, together with the Order Appointing Court Investigator and the Referral for Investigator's Report.

(Effective 7/1/03)

(c) The clerk will issue the initial citation. If the citee has not been served with citation or such service is defective, a new citation must issue. If the matter is continued because the citation has not been served or service is defective, the court will order a new citation to issue and fix a new hearing date.

(Effective 7/1/03)

8.9.2 Appointment of Attorneys for Conservatee (Effective 7/1/03)

Representation by an attorney appointed by the court in any of the above cases ceases upon an order of the court relieving said attorney as counsel.

(Effective 7/1/03)

8.9.3 Notice of Change of Address (Effective 7/1/03)

Conservators, guardians and personal representatives shall inform the court of any change of their address, or the address of their wards or conservatees, within thirty (30) days. Failure to comply may result in suspension or removal.

(Effective 7/1/03)

8.9.4 Assessments (Effective 7/1/03)

The court will order the payment of the total assessments levied for the probate investigator in any estate having sufficient funds to pay such assessments when the conservatorship is terminated by court order and in all cases where the conservatorship is terminated by death. Each account current must include payment of the assessment levied in the accounting period. No final discharge will be granted until proof of payment is filed with the court.

(Effective 7/1/03)

8.9.5 Resignation of Conservator (Effective 7/1/03)

(a) The conservator may resign at any time, but the resignation is not effective until the appointment of a successor conservator (termination does not require resignation).

(Effective 7/1/03)

(b) A Petition for Resignation may not be combined with a Petition for Appointment of a Successor conservator.

(Effective 7/1/03)

8.10 Law and Motion And Discovery Matters (Effective 7/1/03)

8.10.1 Applicability of Kern County Uniform Rules of Court Relating to Law and Motion and Discovery in Probate Proceedings (Effective 7/1/03)

Except where, for good cause, the court dispenses with or modifies notice: (Effective 7/1/03)

(a) Counsel shall comply with the pertinent sections of the Law and Motion and discovery rules of the Superior Court of California, County of Kern, as amended from time to time with respect to demurrers, motions to strike, judicial notice, motions for summary judgment and any other pretrial motions. Service and filing of all motions and responsive papers shall be in accord with said rules.

(Effective 7/1/03)

(b) All preference motions under Section 36(a) of the Code of Civil Procedure must be heard and determined in the Presiding Department. When a motion for preference is granted, the attorneys shall be ordered to a Mandatory Settlement Conference, unless directed otherwise by the Presiding Department.

(Effective 7/1/03)

8.11 Withdrawal of Attorneys of Record (Effective 7/1/03)

If an attorney wishes to withdraw from a proceeding as attorney of record for the estate representative or any other fiduciary he/she must file a motion seeking such relief.

(Effective 7/1/03)

8.12 Forms of Documents Presented for Filing (Effective 1/1/06; Rev. 7/1/09; Rev. 1/1/10)

(a) All pleadings shall comply with Rules 2.100-2.119 and 3.1110 of the California Rules of Court. All documents and/or pleadings submitted in which a matter is set for hearing must specify the department number, hearing date, and time underneath the title of the document and/or pleading.

(Effective 1/1/06)

(b) Except those received via facsimile filings, all documents containing attachments, schedules, or exhibits shall be indexed and tabbed at the bottom. Where there is a single attachment or exhibit, the index requirement is inapplicable. Each page shall have page numbers to facilitate review by the court. All documents received via facsimile filing shall contain a titled cover sheet between attachments, schedules, and/or exhibits.

(Effective 01/01/06; rev. 1/1/10)

(c) Parties shall be required to provide an original and two (2) copies of all submitted documents for filing.

(Effective 1/1/06; rev. 1/1/10)

8.13 Obtaining a Hearing Date (Effective 1/1/06; Rev. 1/1/10)

Hearing dates are obtained at the time of the submission of a petition and a notice of hearing to the Clerk of the Court. Hearing dates are assigned by the Court.

(Effective 01/01/06; rev. 1/1/10)

8.14 Consolidation with the Lowest Number (Effective 1/1/06)

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee, or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

(Effective 1/1/06)

8.15 Petition for Confirmation of Trust Assets Pursuant to Estate of Heggstad (Effective 1/1/06; Rev. 7/1/09)

(a) Copies of all testamentary instruments shall be attached to the petition.

(Effective 1/1/06)

(b) Copies of pertinent and current documents of title to the assets in question shall be attached to the petition. Petitioner shall redact confidential information such as social security and account numbers before attaching the documents to the petition.

(Effective 01/01/06; rev 7/1/09)

(c) If the assets to be confirmed are not clearly declared as trust assets in the instrument, or if title was transferred to the trustee and later transferred from the trustee, all persons named in any testamentary instrument as heirs at law must be listed in the petition and given notice, in addition to the notice required by Probate Code Section 17203. (Eff. 1/1/06; rev. 7/1/09)

8.16 Trustee Compensation (Effective 1/1/06)

Compensation for the trustee will ordinarily be allowed as provided in the governing instrument, unless the court fixes a greater or lesser amount pursuant to Probate Code Section 15680(b). If the instrument is not specific, the court will establish reasonable compensation. A fee of 1% of the fair market value of the ending balance on hand will ordinarily constitute reasonable compensation, prorated if services have been rendered for less than a full year. If compensation higher than 1% of the ending market value is requested, the request must be supported by a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate.

(Effective 1/1/06)

8.17 Attorney Fees (Effective 1/1/06)

Compensation for attorney for the trust will ordinarily be allowed as provided in the governing instrument. If the instrument is not specific, the court will establish reasonable compensation, based on a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate.

(Effective 1/1/06)

8.18 Telephonic Court Appearances in Probate Division (Effective 7/1/09)

Within the Superior Court of California, County of Kern, the Probate Division and Departments within said Division shall allow telephonic court appearances through CourtCall. Telephonic court appearances are permitted for nontestimonial hearings and conferences in probate and trust cases, minor's compromises, and compliance hearings. A party may appear by telephone at the following hearings, conferences and proceedings: (1) case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date; (2) trial setting conferences; (3) hearings on law and motion, except motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of an arbitration or mediation; (6) hearings to review the dismissal of an action, (7) compliance hearings. CourtCall may be arranged by contacting CourtCall LLC at 6383 Arizona Circle, Los Angeles, California 90045, toll free telephone number (888) 88-court or (310) 342-0888, fax number (310)743-1850 or (888) FAXIN. Contact must be made at least three (3) days in advance of the appearance or with leave of Court on Ex Parte application and payment of a motion filing fee. Counsel should refer to California Rules of Court 3.670, as amended 01/01/08.

(Effective 7/1/09)

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Kings County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Lake County
Probate Rules

Effective January 1, 2010

CHAPTER 6
PROBATE

6.1 Applicability of Rules (eff. 6/30/91, amd. 1/1/2009)

6.2 Submission of Matter Without Appearance by Counsel or Witnesses (eff. 6/30/91, amd. 1/1/2009)

6.3 Non-resident Personal Representative to Furnish Bond Notwithstanding waiver (eff. 6/30/91, amd. 1/1/2009)

6.4 Required Form of Accounts (eff. 6/30/91, amd. 1/1/2009)

6.5 Appointment of Expert to Analyze Complex Accounts and Surcharge of Cost Against Representative (eff. 6/30/91)

6.6 Allowance of Claims of Personal Representatives (eff. 6/30/91)

6.7 Statement Regarding Bond On Inventory and Appraisal (eff. 6/30/91)

6.8 Amount of Personal Representative's Bond Where Independent Administration is Authorized (eff. 6/30/91, amd. 1/1/2009)

CHAPTER 11
FEES OF ATTORNEYS AND FIDUCIARIES

11.1 Attorneys' Fees in Guardianship and Conservatorship Proceedings (eff. 6/30/91)

11.2 Attorneys' Fees and Representatives' Fees for Extraordinary Services in Probate Cases (eff. 6/30/91)

11.3 Fees of Guardians and Conservators (eff. 6/30/91)

11.4 Fees and Commissions Must be Fixed by Court Prior to Payment

11.5 Default Cases (eff. 6/30/91)

11.6 Unlawful Detainer Cases (eff. 7/1/93, amd. 1/1/2009)

CHAPTER 6
PROBATE

6.1 Applicability of Rules (eff. 6/30/91, amd. 1/1/2009)

The rules stated in this chapter shall govern all proceedings brought pursuant to the Probate Code.

6.2 Submission of Matter Without Appearance by Counsel or Witnesses (eff. 6/30/91, amd. 1/1/2009)

A matter that by law may be determined upon declaration, affidavit or verified pleading and without testimony, may ordinarily be submitted for appropriate action by the court without appearance by counsel or witnesses provided that all necessary papers, including declarations and proposed orders, must be delivered to the clerk within the time limit prescribed by rule 3.3.

6.3 Non-resident Personal Representative to Furnish Bond Notwithstanding waiver (eff. 6/30/91, amd. 1/1/2009)

Notwithstanding a waiver of bond arising by operation of law or contained in any will by which a personal representative is nominated, every non-resident of the state of California shall furnish the required statutory bond as a condition of appointment as personal representative unless a waiver of bond is filed by all of the heirs of the decedent's estate and approved by the court.

6.4 Required Form of Accounts (eff. 6/30/91, amd. 1/1/2009)

All accounts filed in probate proceedings, which shall include estates, guardianship, conservatorship and testamentary trust accounts, shall conform to California Probate Code § 1061 through 1064 as they may be amended, and to the extent possible shall be set forth on forms approved by the Judicial Council.

6.5 Appointment of Expert to Analyze Complex Accounts and Surcharge of Cost Against Representative (eff. 6/30/91)

When, because of the volume or complexity of an account, an analysis thereof by the court would appear to be unusually time consuming or difficult, the court will, on its on motion, appoint an expert—usually a certified public accountant—to analyze the account and report findings to the court. The compensation for such expert shall be fixed by the court and ordered paid from the assets of the estate as a cost of administration. If the court finds that the account was unnecessarily voluminous or complex, the representative shall be surcharged the amount of such compensation.

6.6 Allowance of Claims of Personal Representatives (eff. 6/30/91)

Claims of personal representatives will be allowed pursuant to Probate Code §9252 only upon a written petition for the allowance thereof, after every person interested in the estate shall have been given notice of hearing of said petition in the manner provided by Probate Code §1220.

6.7 Statement Regarding Bond On Inventory and Appraisal (eff. 6/30/91)

Counsel for the personal representative or the personal representative, if acting without counsel, will complete all appropriate statements regarding the representative's bond which are called for upon the inventory and appraisal form in current use with the approval of the Judicial Council of California.

6.8 Amount of Personal Representative's Bond Where Independent Administration is Authorized (eff. 6/30/91, amd. 1/1/2009)

In proceedings in which authority is sought pursuant to the Independent Administration of Estates Act (Probate Code §10400, et seq.) which would authorize the personal representative to sell real property without court supervision, the petition for probate will disclose the estimated net value of the decedent's real property and the order for probate will fix the amount of the bond required of the personal representative at not less than the aggregate of the estimated value of the decedent's personal property, the estimated net value of the real property, and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount. (See Probate Code §10453)

CHAPTER 11
FEES OF ATTORNEYS AND FIDUCIARIES

11.1 Attorneys' Fees in Guardianship and Conservatorship Proceedings (eff. 6/30/91)

Attorneys for guardians and conservators are compensated according to the work actually performed. The size of the estate corpus and the responsibility assumed by the attorney are only two of the factors considered in arriving at the value of the services. Application for attorney's fees must be accompanied by a complete statement of the facts upon which the application is based, including a detailed statement of the amount of time devoted to each component of the services, and must specify the amount requested for each item of service, not merely reasonable fees.

11.2 Attorneys' Fees and Representatives' Fees for Extraordinary Services in Probate Cases (eff. 6/30/91)

A. In evaluating the justification for an award of fees for extraordinary services of an attorney or representative, the court will take into consideration the statutory fee and the extent to which it constitutes adequate compensation for all of the services rendered by the attorney or representative.

B. Subject to the principle stated in the foregoing paragraph A, compensation for extraordinary services will be considered in the following situations:

1. Litigation on behalf of the estate.

2. Operating or selling a business.

3. Sales of estate property.

4. Performance of any act resulting in extraordinary benefit to the estate or requiring an extraordinary expenditure of time or display of competence.

C. Application for fees for extraordinary services will not be considered unless the title of the petition and the notice of hearing include a reference to the request. The prayer shall set forth the amount of the request.

D. An application for compensation for extraordinary services shall specify, with respect to such services:

1. The date rendered.

2. Nature of services rendered, in detail.

3. Hours spent on ordinary services.

4. Hours spent on extraordinary services.

5. Hourly rate.

6. Total amount requested.

E. Ordinarily compensation for extraordinary services will not be allowed or paid before the final accounting has been approved by the court.

11.3 Fees of Guardians and Conservators (eff. 6/30/91)

Among factors to be considered in determining the compensation allowable to guardians and conservators are:

A. The gross value and income of the estate;

B. The success or failure of administration of the guardian or conservator;

C. Any unusual skill or experience which the guardian or conservator in question may have brought to his work;

D. The fidelity or disloyalty displayed by the guardian or conservator;

E. The amount of risk and responsibility assumed by the guardian or conservator in carrying out the duties;

F. The time consumed by the guardian or conservator in carrying out the duties;

G. The custom in the community as to charges exacted by trust companies and banks;

H. The character of the work done in the course of administration, whether routine or involving skill and judgment; and

I. The value to the ward or conservatee of the services of the guardian or conservator. (See Estate of Nazro (1971) 15 Cal.App.3d 218).

11.4 Fees and Commissions Must be Fixed by Court Prior to Payment

There is no authority for the payment of any fees or commissions in decedent's estates, guardianships or conservatorships in advance of a court order authorizing the same. The recipient of any unauthorized payment will be surcharged interest to the date of an order authorizing such payment, unless in the case of decedent's estates, the written consent of the residuary beneficiaries is filed with the court and the amounts paid are reasonable and proper.

11.5 Default Cases (eff. 6/30/91)

The court adopts the following as its general fee schedule for default matters. Counsel may request a greater amount by setting forth in affidavit form the amount requested along with justification for the increase. (Effective 7/1/1993 revised 1/1/2009)

25% of the first	**$ 1,000**	**($300 minimum)**
20% of the next	**$ 4,000**	
15% of the next	**$ 4,000**	
10% of the next	**$ 10,000**	
5% of the next	**$ 30,000**	
2% of the next	**$ 50,000**	

2% of the next	**$ 100,000**

11.6 Unlawful Detainer Cases (eff. 7/1/93, amd. 1/1/2009)

The presumed reasonable fee for a default unlawful detainer case is $350. If an answer has been filed, but is uncontested at trial the fee will be $400. If an answer has been filed and the case is contested at trial the fee will be $500. Counsel may, by affidavit, request additional attorney fees.

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Lassen County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Los Angeles County
Probate Rules

Effective January 1, 2010

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CHAPTER TEN
PROBATE DEPARTMENT RULES

GENERAL PROVISIONS

10.0 APPLICABILITY OF RULES

(a) Applicability of Rules. The rules of this Chapter apply to all actions and proceedings to which the Probate Code applies and, unless they are elsewhere specifically made applicable, do not apply to any other action or proceeding.

(b) Rules of Construction. To the extent that the rules in this Chapter may add to existing statutory provisions relating to the same subject matter, they must be construed so as to implement the purposes of those statutes.

(c) Jurisdiction. The rules in this Chapter are not intended to expand or restrict the jurisdiction of the court in proceedings under the Probate Code.

(Rule 10.0 [1/1/95, 1/1/98] amended and effective January 1, 2008.)

10.1 EXCUSE FROM COMPLIANCE

The court for good cause may waive the application of the rules in this chapter in an individual case.

(Rule 10.1 [1/1/95, 1/1/98] amended and effective January 1, 2008.)

10.2 PROBATE COURT INFORMATION

(a) District Courts Hearing Probate Matters. The following Los Angeles Superior Court districts accept for filing and hear Probate matters:

District	Case Number Prefixes
Central District (Los Angeles)	BP/P
East District (Pomona)	KP/EAP
Northeast (Pasadena)	GP/NEP/NCP/EP/EP-B
North (Antelope Valley)	MP/NOP
Northwest (Van Nuys)	LP/PP/NWP/NVP
South Central (Compton)	TP/SCP
Southeast (Norwalk)	VP/SEP
South (Long Beach)	NP/SOP
Southwest (Torrance)	YP/SWP
West (Santa Monica)	SP/WEP

(b) Addresses and Telephone Numbers and Calendaring Information. Addresses, telephone numbers and calendaring information for each Probate Court can be found on-line at www.lasuperiorcourt.org or by calling the court.

(Rule 10.2 [previously as, 10.6] new and effective January 1, 2008.)

10.3 PROBATE ATTORNEY'S NOTES

(a) Probate Notes Available on the Web. Probate notes are available in advance of the hearing at www.lasuperiorcourt.org.

(b) Clearing Probate Notes. Counsel or parties must file additional documents as necessary to justify approval of the petition as stated in "Matters To Clear" section of the Probate Notes. Items noted under the "Matters To Clear" must be cleared by the party no later than 3:30 p.m. of the second court day preceding the hearing date.

(c) Updated Probate Notes. It is the responsibility of counsel or parties to confirm that Probate Notes have been updated after the filing of additional documents. If the Probate Notes have not been updated, it is recommended that counsel contact the Probate Attorney via email in Central District and the District Courts where available.

(d) Failure to Clear Probate Notes. If Probate Notes are not cleared, the Court will continue the hearing, place the matter off calendar, deny the matter without prejudice, or take other action it deems necessary.

(Rule 10.3 [previously as, 10.31.1] new and effective January 1, 2008.)

10.4 PROBATE NOTE ABBREVIATIONS

The abbreviations adopted for use in Probate notes are set forth in Appendix A.

(Rule 10.4 [previously as, Rule 10.32] new and effective January 1, 2008.)

HEARINGS, EX PARTE PROCEDURES AND TRIALS

10.5 SETTING OF PROBATE MATTERS

Petitions filed in Probate cases requiring a hearing will be assigned a hearing date by the clerk at the time of filing. Parties should insure, prior to leaving the filing window, that a hearing date has been assigned. Requests for early settings must be presented in the office of the Probate Attorney and must be accompanied by a declaration of urgency. Requests will be granted for good cause only; convenience of counsel or parties does not constitute good cause.

(Rule 10.5 [previously as, 10.15] new and effective January 1, 2008.)

10.6 RESETTING PETITIONS

A request to reset a petition that was placed off calendar must be made in the office of the Probate Attorney. A supplement setting forth the current status must be presented at the time of the request.

(Rule 10.6 [previously as, 10.15.1] new and effective January 1, 2008.)

10.7 CENTRAL DISTRICT—PROBATE LAW AND MOTION MATTERS

(a) Setting for Probate Law and Motion Matters. Probate Law and Motion and Discovery matters in cases pending in the Central District will be set for hearing at 10:30 a.m., Mondays through Wednesdays.

(b) Filing Oppositions, Joinders and Replies to Opposition in Law and Motion Matters. In Central District proceedings, opposition or joinders to law and motion matters must be filed at the Probate filing window. Replies to opposition papers must be filed in the department assigned to the case for hearing. The Court will not, without good cause, consider surreply papers.

(Rule 10.7 [previously as, 10.195] new and effective January 1, 2008.)

10.8 EX PARTE PROCEDURES

(a) Time for Ex Parte Matters in Central District. In the absence of exceptional circumstances, all ex parte matters for Probate cases assigned to the Central District shall be presented to the Probate Attorneys Office at 8:30 a.m. daily.

(b) Time for Ex Parte Matters in District Courts. Ex parte matters concerning district court cases shall be heard at the time and place designated by that district. Information concerning ex parte matters may be posted on the Court's website www.lasuperiorcourt.org or may be obtained by calling the district.

(c) Preliminary Considerations:

(1) Payment of Filing Fees. Court filing fees shall be paid and the Court file secured prior to presenting the ex parte matter to the Probate Attorney for review.

(2) Special Notices. The ex parte application, petition or motion must include an allegation that special notice has not been requested or a written waiver of special notice has been filed.

(d) Ex Parte Procedures. California Rules of Court, Title 3, Division 11, Rule 3.1200 et seq. shall be followed for all ex parte applications, motions and petitions.

(1) Emergency Ex Parte Matters. Applications for ex parte relief shall be presented by the petitioner or their attorney. When there is opposition, the Court may set the matter for hearing.

(2) Drop-off Ex Parte Matters. In addition to the ex parte procedures provided in California Rules of Court, ex parte applications, motions and petitions will be accepted for review as permitted by statute. These ex parte matters may be delivered to the Probate Attorney's Office at any time and will be reviewed by the Probate Attorney within five court days.

(3) Temporary Conservatorships and Guardianships. Petitions for appointment of temporary conservators and guardians, absent exigent emergency circumstances, will be set for hearing not less than five court days after filing. Hearing dates are assigned in the Probate Attorney's Office.

(4) Applications for Nunc Pro Tunc Orders. Applications for Nunc Pro Tunc orders may be presented ex parte.

(Rule 10.8 [previously as, 10.37] new and effective January 1, 2008.)

10.9 PROBATE HEARINGS CANNOT BE ADVANCED

When a trust or decedent's estate matter has been set for hearing, or when it has been noticed and then continued to a definite date, the hearing cannot be advanced to an earlier date. Additionally, the matter cannot be heard on an earlier date by filing a new petition or an amended petition.

(Rule 10.9 [previously as, 10.17] new and effective January 1, 2008.)

10.10 CONTINUANCES OF NON-TRIAL MATTERS

(a) Continuances of Matters Not Ready for Hearing. If there has been no prior continuance, the Court will usually continue a matter not ready for hearing at least four weeks. A matter is not ready for hearing when there are unresolved issues, procedural or factual, raised in the Probate Notes, other than matters designated for the Court to determine ("JTD").

If there are unresolved matters appearing in the Probate Notes on the second continued date, the matter will be placed off calendar or denied without prejudice, unless an oral motion for continuance is granted by the Court upon the personal appearance by counsel or the party.

(b) Continuances Pursuant to Stipulation. Matters will not be continued by stipulation of counsel without order of the Court or recommendation of the Probate Attorney.

(c) Continuance To Permit Filing of Objections/Responses. See Rule 10.7.

(d) Notice of Continued Matters. If a petition was properly noticed, new notice of the continued date is not required, unless specifically ordered by the Court. This rule does not apply to notice by citation.

(Rule 10.10 [previously as, 10.19] new and effective January 1, 2008.)

10.11 CONTINUING PROBATE LAW AND MOTION MATTERS

Probate Law and Motion and Discovery matters may be continued only with approval of the Court.

(Rule 10.11 [previously as, 10.194] new and effective January 1, 2008.)

10.12 TRIALS ON CONTESTED MATTERS IN CENTRAL DISTRICT

(a) Trial Setting. A contested matter which is at issue will be set for trial.

(b) Joint Trial Statements for All Contested Matters. All counsel and parties appearing in propria persona (pro per/self represented) must comply with the Mandatory Joint Trial Statement Policy.

(c) Continuances. Trials may be continued for good cause only by order of the Court. If all parties waive notice, a Motion for Continuance may be presented ex parte. Such motions must be made at the earliest possible time and in no event less than one week prior to trial. Further trial preparation or settlement of a case, without a settlement agreement, does not constitute good cause.

(d) Motions in Limine. Motions in limine must comply with the notice provisions of the Code of Civil Procedure. The motions must be set for hearing no later than the first day of trial.

(Rule 10.12 [previously as, 10.20] new and effective January 1, 2008.)

TRANSFERRING, CONSOLIDATING, AND RELATING CASES

10.13 TRANSFERS FROM ONE DISTRICT TO ANOTHER

A motion to transfer from one district to another must be filed in the Probate Department of the district where the case is pending.

(Rule 10.13 [previously as, 10.192] new and effective January 1, 2008.)

10.14 CONSOLIDATION AND/OR TRANSFER OF CASES

When two or more petitions with different case numbers have been filed, with reference to the same decedent's estate, conservatee, minor or trust, the Court may, on its own motion, consolidate all matters with the case number assigned to the lowest

case.

When two or more petitions have been filed in different districts, the proceedings will be transferred to the district in which the first petition was filed.

When a consolidation and/or transfer of proceedings is ordered, subsequent documents shall be filed using the case number designated by the Court in the consolidation and/or transfer order.

(Rule 10.14 [previously as, 10.4] new and effective January 1, 2008.)

10.15 RELATED CASES

(a) Related Probate Cases. Related probate cases, for purposes of this section, are Los Angeles Superior Court cases which involve the same decedent, conservatee, ward, settlor/trustor or other parties which are substantially affected, and concern issues governed by the Probate Code. Counsel for any party and self-represented parties in such cases shall inform the Court of all such related cases by filing and serving notice of related cases in each such case or by orally informing the Court on the record.

Related Probate Cases shall be transferred, except for good cause, to the department to which the lead case is assigned. The first filed Probate Case shall be the lead case.

(b) Relating Probate Cases To Non-Probate Cases. Relating non-probate cases to probate cases is governed by Rule 7.3(f) of the Los Angeles Superior Court Rules.

(Rule 10.15 [previously as, 10.5] new and effective January 1, 2008.)

PLEADINGS

10.16 DOCUMENT FILINGS REQUIRE DEPARTMENT NUMBER AND HEARING DATE

All documents filed in connection with matters already set for hearing must contain the hearing date, time and department below the case number in the caption section of the document. Documents that do not conform to this rule may be rejected for filing by the clerk.

(Rule 10.16 [previously as, 10.10] new and effective January 1, 2008.)

10.17 DOCUMENT FILING REQUIREMENTS

(a) Reproducing Judicial Council Forms. When Judicial Council forms are reproduced on the front and back of a single sheet, they must be reproduced exactly and therefore the back sheet must be inverted ("tumbled") so that it can be read when placed in the court's file jacket.

(b) Filing Requirements to Facilitate Document Scanning. Documents filed with the court must be assembled as follows:

(1) Page Numbers. Each page must contain the case number, either at the top or the end of page

(2) Tabs. Tabs must appear at the end of the page (not on the side of the page)

(3) Backings and Separators. Bluebacks, or other colored backs, card stock separators and "Post a Notes" may not be used

(4) Staples. Staples may be used at the top of pleadings only

(5) Securing Documents to Pleadings. Documents that are secured to pages of a pleading (pictures, receipts, etc.) must be securely taped (not stapled)

(6) Confidential Documents. Confidential documents, including but not limited to Court Investigator's Reports, Confidential Screen forms, financial statements with social security numbers must not be attached to pleadings that will be part of the public file.

(Rule 10.17 [previously as, 10.11] new and effective January 1, 2008.)

10.18 SUPPLEMENTAL AND AMENDED PLEADINGS

(a) Supplemental Pleadings. A supplement to a pleading must provide additional or clarifying information in support of the pleading it supplements. A supplement to a pleading must be captioned "Supplement to ….". Timely service of a copy of the

supplement is required when service of a copy of the initial pleading was required.

(b) Amended Pleading. An amended pleading, as distinguished from a "supplement" to a pleading, requires the same notice (including publication) as the pleading it amends and must be filed and set for hearing as though an original petition. When a Judicial Council form was used for the original pleading, the amended pleading must also use a Judicial Council form on which the word "Amended" is added to the caption.

(Rule 10.18 [previously as, 10.14] new and effective January 1, 2008.)

10.19 OPPOSITION AND REPLY PLEADINGS

The Probate Code allows any interested person to appear and make a response or objection orally or in writing at or before the hearing. If a response or an objection is made at the time of the first hearing on a petition, the court will ordinarily continue the hearing to allow objections or a response to be filed and to allow the petitioner to file a reply to the response or the objections.

If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.

(Rule 10.19 [previously as, 10.13.1] new and effective January 1, 2008.)

10.20 ORDERS

(a) Orders in Contested Proceedings. Orders must be prepared in accordance with Civil Law and Motion Rules.

(b) Use of Judicial Council Form Orders. The attorney or a self represented party must, when no Judicial Council form order is available, prepare proposed orders and decrees of the Court.

(c) Probate Volunteer Panel (PVP) Attorney's Approval of Orders. In all matters where there is a PVP Attorney, the PVP Attorney must indicate approval as to form and content by signing at the end of the proposed order. After approval, the proposed order must be lodged with the Court.

(d) Material To Be Included In Probate Orders:

(1) Contents of Order. Orders must contain the name of the judicial officer presiding, the date of the hearing, the department, and the names of all persons appearing at the hearing. Orders must set forth, with the same particularity required of judgments in civil matters, all matters ruled upon by the Court. No text may appear after the signature of the judicial officer.

(2) Orders for Probate of Lost Wills. Judicial Council form "Order for Probate" must be used with an attachment setting forth the terms of the lost will and/or codicil.

(3) Orders Involving Real Property. Orders affecting real property must include: a full legal description of the real property; street address, if applicable; and Assessor's Parcel Number (APN).

(4) Orders Settling Accounts. Orders settling accounts must state the beginning and ending dates of the account period and contain general language approving the account, report and the acts reflected therein. These orders must contain a statement as to the balance of the property on hand as reflected in the Summary of Account and the amount of cash included in the balance.

(5) Orders Providing for Periodic Payments. Orders providing for periodic payments must contain the following language "commencing _____ and continuing not to exceed ____ months."

(e) Riders and Exhibits. When orders include attachments, the place for execution by the court must appear at the end of the last attachment and an appropriate notation must be made indicating the order is signed at the end of the last attachment.

(f) Nunc Pro Tunc Orders:

(1) Nunc Pro Tunc Orders. When a signed order contains a clerical error it may be corrected by filing an application and presenting a proposed nunc pro tunc order correcting the error. The application for a nunc pro tunc order must include a declaration in support thereof and the proposed order. The documents must be presented to the Probate Attorney with the court file.

(2) Format of Order. The nunc pro tunc order must not take the form of an amended order and must be substantially in the following format: "Upon the consideration of the application of _____, to correct a clerical error, the (identify the order to be corrected, giving the title and date thereof) is corrected, by striking the following (set forth the portion to be corrected) and

by inserting in lieu thereof the following (set forth the corrected language)".

To prevent confusion, a complete clause or sentence should be stricken and correctly restated.

(Rule 10.20 [previously as, 10.36, 10.41, 10.42 & 10.44] new and effective January 1, 2008.)

10.21 ISSUANCE OF LETTERS TO PERSONAL REPRESENTATIVES OF DECEDENTS' ESTATES

(a) Issuance of Letters. The order of appointment, bond (if ordered), the Duties and Liabilities of the Personal Representative form and the Confidential Supplement To Duties and Liabilities of Personal Representative form, together with executed Letters must be submitted to the Court to be issued by the clerk.

(b) Multiple Representatives. When the court appoints multiple representatives, the court will issue Letters (Testamentary/Administration) jointly to all of the personal representatives appointed.

(c) Confidential Supplement To Duties and Liabilities of Personal Representative. The Confidential Supplement To Duties and Liabilities of Personal Representative must be submitted by each personal representative and must contain the personal representative's date of birth and driver's license number. This form is confidential and is not placed in the public court file.

(Rule 10.21 [previously as, 10.59 & 10.63] new and effective January 1, 2008.)

PROVISIONS COMMON TO VARIOUS CASE TYPES AND MISCELLANEOUS PROCEEDINGS

10.22 MOTIONS TO WITHDRAW AS ATTORNEY OF RECORD - CITATION REQUIRED FOR FIDUCIARY

When an attorney files a motion to withdraw as attorney of record for a fiduciary, service must be made by citation. The citation must be served in the manner provided in section 415.10 or 415.30 of the Code of Civil Procedure. If the fiduciary resides outside of this state, service may also be made in the manner provided in section 415.40 of the Code of Civil Procedure.

(Rule 10.22 [previously as, 10.197] new and effective January 1, 2008.)

10.23 PARTY TO GIVE NOTICE

(a) Party To Give Notice. The responsibility is on the party or his/her attorney to cause notice to be given and to file the notice form and proper proof of service with the Court.

(b) Undelivered Notice. When notice is returned as undeliverable, the envelop containing such notice must be placed in the court's file.

(Rule 10.23 [previously as, 10.50] new and effective January 1, 2008.)

10.24 PETITION TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY

(a) Caption and Setting. The caption of the petition must reference Probate Code section 850. Because of the 30 day notice requirement, petitions will not be set for hearing sooner than six weeks from the date of filing. If it is anticipated there may be difficulties in completing the required service, a later date should be requested to avoid continuances.

(b) Notice of Hearing. Notice of hearing must contain the following:

(1) A description of the subject property sufficient to provide adequate notice to any party who might be interested in the property, and with respect to real property, the street address, or if none, description of the location of the property.

(2) A statement advising that any person interested in the property that is the subject of the petition may file an answer to the petition.

(Rule 10.24 [previously as, 10.73] new and effective January 1, 2008.)

10.25 APPRAISAL OF PERSONAL PROPERTY BEFORE SALE

When a party requests an order for confirmation or approval of sale of personal property, an appraisal of the property must be filed with the Court.

The appraisal requirement may be satisfied by an Inventory and Appraisal or a letter appraisal from the probate referee.

(Rule 10.25 [previously as, 10.96] new and effective January 1, 2008.)

10.26 SALES OF REAL PROPERTY

(a) Published Notice for Private Sales of Real Estate:

(1) Terms of Sale. The published notice of sale of real property constitutes a solicitation of offers and there cannot be a substantial variance in the terms of sale as between the published notice and the petition. When an executor publishes a notice of sale and later a technical defect appears, the defect cannot be cured by the executor's power of sale given in the will. The publication constitutes an election to sell by means of published notice.

(2) Time. If the Report of Sale and Petition for Order Confirming Sale of Real Property alleges the private sale took place prior to the date stated in the published notice, the sale will not be confirmed. In addition, if the Report of Sale and Petition for Confirmation is filed prior to the date of sale stated in the notice, the court must deny the petition without prejudice.

(b) Sale of Specifically Devised Real Property. When a Report and Petition for Confirmation of Sale of Real Property is filed, notice of the time and place of hearing must be given to the specific devisee(s), unless the devisee(s)'s consents to the sale are filed with the Court.

(c) Increased Bid Forms. When there is a successful overbid in open court on a sale of real property, counsel must complete and the successful bidder must sign and file a "Bid In Open Court on Sale of Real Property" form.

(d) Real Estate Commissions. The Court will not allow commissions in excess of five percent (5%) to an agent, broker or auctioneer, unless justified by exceptional circumstances, for the sale of improved real property. A commission not to exceed ten percent (10%) may be allowed for the sale of raw land.

(Rule 10.26 [previously as, 10.89, 10.93, 10.95 & 10.99] new and effective January 1, 2008.)

10.27 BORROWING AND REFINANCING

(a) Petition. The petition must include allegations concerning the following:

(1) Existing encumbrances, including whether there is a purchase money mortgage

(2) Efforts to obtain the most favorable financing

(3) The estate's ability to service the debt

(4) All costs related to obtaining the loan, including but not limited to, loan discount points and broker's commission/fee

(5) The sufficiency of the existing bond and the need for additional bond, if any.

(b) Inventory and Appraisal. If a loan is to be secured by property of the estate, an inventory of said asset must be filed prior to the hearing.

(Rule 10.27 [previously as, 10.77] new and effective January 1, 2008.)

10.28 REDUCTION AND WAIVER OF BOND

(a) Court Order Required to Increase or Decrease Bond or Substitute Surety. A court order is required to reduce the amount of the bond or to substitute a surety.

(b) Description of Bonds in Accounts. The total amount of the bond posted must be set forth in the petition that accompanies an account current. A statement concerning the sufficiency of the bond and whether additional bond or a reduction is needed must also be included in the petition.

(c) Request for Bond Waiver In Decedents' Estates Proceedings. In all cases where bond is not waived in the will, or the proposed personal representative resides out-of-state, and a waiver of bond is being requested, the petitioner must submit a declaration which states: (1) the number of unsecured creditors of the estate and the estimated estate liability to such creditors; (2) whether the estate is solvent; (3) all estimated tax liabilities, if any; (4) the amount of any known contingent liabilities; and, (5) the due diligence performed to ascertain the above information.

(d) Appearance Required In Decedents' Estate Proceedings. When a bond is not waived in the will for the proposed personal representative, the Court may require an appearance. When the proposed personal representative is a non-California resident, an

appearance is required if a bond waiver is requested in the petition.

(Rule 10.28 [previously as, 10.57] new and effective January 1, 2008.)

10.29 BANK STATEMENTS AND BLOCKED ACCOUNTS

(a) Decedents' Estates and Trusts. In decedent's estate and trust proceedings, all interim accounts must include original bank statements showing the balance as of the ending date of the account period.

(b) Reconciliation. If the balance shown in the bank statement does not agree with the account balance as reported in the account, then the fiduciary must provide a written reconciliation.

(c) Confidential Financial Statements. If a bank account statement contains the estate's or trust's tax identification number or other personal information that would not ordinarily be disclosed in the account, inventory and appraisal or other non-confidential pleading filed in the action, the account statement must be filed under a separate case cover sheet and the caption must state "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters so that it can be kept separately from the public record.

(d) Blocked Accounts. When the Court has ordered estate or trust assets deposited in a blocked account in a financial institution or trust company, the bank account statement, or separate letter from the financial institution, must be provided confirming that no funds may be withdrawn except upon court order.

(Rule 10.29 [previously as, 10.113] new and effective January 1, 2008.)

10.30 ACCOUNTS AND REPORTS SUFFICIENCY OF BOND TO BE STATED

The petition for approval of accounts must state whether an additional bond or reduction of bond is necessary and whether bank accounts or securities are on deposit in blocked accounts. Proof of deposit and block account status must be filed.

(Rule 10.30 [previously as, 10.155] new and effective January 1, 2008.)

10.31 PAYMENT AND REIMBURSEMENT OF COSTS

(a) Non-reimbursable Costs. The following costs may not be reimbursed to the attorney or the personal representative:

(1) Photocopies

(2) Postage

(3) Secretarial services

(4) Local telephone expense

(5) Local travel and mileage

(b) Discretionary Reimbursement. The following costs may be approved by the Court for reimbursement:

(1) Air courier and local messenger services

(2) Long distance telephone expenses

(3) Long distance travel

(4) Extraordinary postage and copying

(5) Parking

(6) Interpreter and translation services

(Rule 10.31 [previously as, 10.109] new and effective January 1, 2008.)

10.32 FINDINGS AS TO CHARACTER OF PROPERTY

(a) Facts Establishing Community or Quasi-community Property Character of Assets. A Spousal or Domestic Property Petition

or a Petition for a Particular Transaction filed per Probate Code section 3100 et seq., that seeks a determination of the community or quasi-community property character of property must contain the following information:

(1) Date and place of marriage.

(2) Description and approximate values of real and personal property owned by the decedent or person lacking legal capacity on the date of marriage and a statement concerning the disposition, if any, of same.

(3) Decedent's or person lacking legal capacity's net worth at the time of marriage.

(4) Description and approximate values and dates of receipt of all property received by the decedent or person lacking legal capacity, by gift, devise, joint tenancy, proceeds of life insurance, and other beneficiary designation, after the date of marriage and a statement concerning the disposition, if any, of same.

(5) Dates of decedent's or person lacking legal capacity's residency in California and supporting information regarding petitioner's claim of character of property acquired during periods of non-residency.

(6) When the petition affects title to real property, a statement concerning the status of record title to real property at the decedent's date of death or at the date of filing the Petition for a Particular Transaction pursuant to Probate Code section 3100 et seq.

(7) When the petition concerns Individual Retirement Accounts (IRA), life insurance policies or other assets that have a beneficiary designation taking effect on death or a pay on death designation, the status of that designation as of the decedent's date of death or at the date of filing the Petition for a Particular Transaction pursuant to Probate Code section 3100 et seq., including the names of beneficiaries or payees.

(8) Facts upon which the claim of community or quasi-community property is based.

(b) Documents Supporting Community or Quasi-community Property Character of Assets. Copies of documents supporting a claim of community or quasi-community character of subject property must be attached to the petition. Also, copies of written agreements between the decedent and the surviving spouse or between the spouses, for purposes of proceeding brought pursuant to Probate Code section 3100 et seq. providing for a non-prorata division of the aggregate value of the community property or quasi-community property, or both, must be attached, or in the alternative, a statement that such an agreement does not exist.

(c) Copies of Deeds To Be Attached. When the Petition affects title to real property, a copy of the deed(s) showing vesting at the decedent's date of death or at the time of filing of the Petition for a Particular Transaction pursuant to Probate Code section 3100 et seq. must be attached to the petition.

(d) Will as Basis for Passing Decedent's Property. When the surviving spouse's or domestic partner's entitlement to the decedent's interest in property is based upon the decedent's will, and the will has not been offered for or admitted to probate, the petitioner must allege that the will has been filed with the court for safekeeping.

(e) Petitioner Is Not the Spouse or Domestic Partner. When the petitioner is the personal representative or the conservator of the spouse or domestic partner, a copy of letters evidencing the appointment must be attached to the petition.

(f) Spousal or Domestic Property Petitions, Findings Regarding Character of Property.

(1) Unless alleged and proved, the court will make no findings as to whether the property is community or quasi-community.

(2) Unless alleged and proved, the court will make no finding as to whether the property is separate property.

(Rule 10.32 [previously as, 10.65, 10.66 &10.68] new and effective January 1, 2008.)

10.33 AFFIDAVITS FOR REAL PROPERTY OF SMALL VALUE PROBATE CODE SECTION 13200 ET SEQ.

When an Affidavit for Real Property of Small Value, pursuant to Probate Code section 13200, is filed with the Court there must be attached to the affidavit one of the following:

(a) Decedent Died Testate. If the decedent died testate, a statement that the decedent died testate and an executed copy of the will;

(b) Decedent Died Intestate. If the decedent died intestate, a statement identifying the relationship of the heir(s) which establishes the affiant's claim to entitlement.

(Rule 10.33 new and effective January 1, 2008.)

DECEDENTS' ESTATES PROCEEDINGS

10.34 APPOINTMENT OF SPECIAL ADMINISTRATORS

(a) Notice. Unless good cause is shown, petitions for special letters of administration will not be granted without notice to the surviving spouse, domestic partner, the person nominated as executor, and any other person whom the Court in its discretion determines is entitled to notice.

(b) Preference. In making the appointment, preference is given to the person(s) entitled to letters testamentary or of administration. If a contest is pending, the Court may appoint a disinterested person or the Public Administrator as special administrator, upon the filing of a proper petition.

(c) Bond. The Court will require the special administrator, including a named executor, to post bond unless sufficient allegations are set forth to justify waiver.

(Rule 10.34 [previously as, 10.45 & 10.58] new and effective January 1, 2008.)

10.35 DECLINATIONS AND CONSENTS TO ACT

(a) Declination of Named Executor. If a named executor declines to act, a written declination to act, signed by that person, must be filed with the court.

(b) Consent to Act. If the Petition for Probate requests appointment of someone other than the petitioner, or someone in addition to the petitioner, a consent to act signed by the nonpetitioning executor/administrator for whom letters are sought, must be filed with the Court.

(Rule 10.35 [previously as, 10.28 & 10.60] new and effective January 1, 2008.)

10.36 APPOINTMENT OF PUBLIC ADMINISTRATOR

(a) Appointment. Persons interested in having the Public Administrator appointed as personal representative should contact the Office of the Public Administrator and County Counsel's Office.

(b) Notice. In cases where it appears the Public Administrator has priority, notice to the Public Administrator and County Counsel must be given.

(Rule 10.36 [previously as, 10.46 and 10.47] new and effective January 1, 2008.)

10.37 PROOF OF WILLS AND CODICILS

(a) Self Proving Wills and Codicils. In an uncontested proceeding, if the attestation clause is signed under penalty of perjury, or subscribed and sworn to before a notary, the will or codicil may be admitted to probate without a separate affidavit or declaration of subscribing witness.

(b) Non-Self Proving Wills. Non-self proving wills must be proved as follows:

(1) Proof of Witnessed Wills. Evidence of one or more of the subscribing witnesses may be presented by filing Judicial Council Proof of Subscribing Witness form.

(2) Proof of Holographic Wills or Codicils. A holographic will or codicil must be proved by filing of Judicial Council Proof of Holographic Instrument form.

(3) Certification of Wills or Codicils. Wills and codicils that are not self-proving must be certified as follows:

(i) Self Represented Parties. Self-represented persons must attach a copy of the will or codicil showing the clerk's filing stamp. Self-represented persons may not certify the photographic copy of the instrument by completing the Attorney Certification.

(ii) Attorney Certifications. The Attorney Certification must be dated on or after the date the Petition for Probate is filed.

(Rule 10.37 [previously as, 10.54] new and effective January 1, 2008.)

10.38 FOREIGN LANGUAGE WILL

If the will or codicil is in a foreign language a translation of the document, authenticated by a declaration by a Judicial Council certified translator, must be attached as an exhibit to the petition.

(Rule 10.38 [previously as, 10.53] new and effective January 1, 2008.)

10.39 SUBSEQUENT PETITIONS FOR PROBATE

Wills and codicils not included in a Petition for Probate of Will must be presented for probate in an amended or subsequent petition and new notice must be published and served.

(Rule 10.39 [previously as, 10.49] new and effective January 1, 2008.)

10.40 INCORPORATED CITIES IN LOS ANGELES COUNTY

Appendix B to this Chapter Ten lists all incorporated cities in the County of Los Angeles.

(Rule 10.40 [previously as, 10.29] new and effective January 1, 2008.)

10.41 NOTICE TO CREDITORS

(a) Notice To Known and Reasonably Ascertainable Creditors. All known and reasonably ascertainable creditors must be notified of the administration of the estate. Judicial Council Notice of Administration To Creditors form must be used for this purpose. The notice(s) with proof of service shall be filed with the court.

(b) Claims by Public Entities. Claims by Public Entities, Medi-Cal and Director of the California Victim Compensation and Governmental Claims Board may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

(Rule 10.41 [previously as, 10.79] new and effective January 1, 2008.)

10.42 CREDITOR'S CLAIMS

(a) Creditor's Claims of Personal Representatives or Their Attorneys:

(1) Personal Services. A creditor's claim of a personal representative or his/her attorney for fees for services personally rendered to the decedent must attach detailed invoices or other itemization of such services.

(2) Reimbursement for Debts. A creditor's claim of a personal representative or his/her attorney for reimbursement of debts or funeral expenses of the decedent must attach detailed invoices or other evidence of payment.

(b) Funeral and Interment Claims. Interest on creditor's claims for funeral interment will be allowed commencing 60 days after the date of death.

(Rule 10.42 [previously as, 10.82 & 10.84] new and effective January 1, 2008.)

10.43 NOTICE OF PROPOSED ACTION

(a) A Notice of Proposed Action. A Notice of Proposed Action must contain a description of the proposed action in reasonably specific terms. If the proposed action involves a sale or exchange of real property or option to purchase real property the notice must include the material terms of the transaction including the sales price and commission(s) payable to the broker(s).

(b) Notice Filed with the Court. The Notice of Proposed Action, together with the proof of service, must be filed with the Court.

(c) Petitions for Distribution. Petitions for distribution must contain a description of the actions taken by the personal representative under the Independent Administration of Estates Act. The personal representative must allege whether Notice of Proposed Action was given or waived or that consents were given by all affected parties.

(Rule 10.43 [previously as, 10.71] new and effective January 1, 2008.)

10.44 PETITION FOR FAMILY ALLOWANCE

(a) Ex Parte Petitions. When a petition for family allowance is presented ex parte, and the petitioner is not the personal

representative, the consent to the allowance or waiver of notice by the personal representative must be filed with the petition.

(b) Limitation on Period of Family Allowance. An order for family allowance will not be made for a period exceeding six months unless good cause is shown, if filed before the Inventory and Appraisal.

(c) Reasonableness and Eligibility. The petition for family allowance must state:

(1) The estimated monthly income of the proposed recipient, including any government benefits.

(2) When the surviving spouse is the petitioner, the spouse's income from sources other than the estate and an itemization of the spouse's separate property.

(3) An itemized estimate of monthly expenses in petitions seeking payments of $1,000 or more per month.

(4) A statement showing how title to subject real property is vested when itemized expenses include payments for real property.

(Rule 10.44 [previously as, 10.75] new and effective January 1, 2008.)

10.45 HEIRSHIP DETERMINATIONS

(a) Notice of Hearing. Notice of hearing together with a copy of the petition must be served on the affected parties and their attorneys of record.

(b) Notice to Attorney General. When notice to the Attorney General is required, notice of hearing together with a copy of the petition must be sent to the Attorney General, Charitable Trusts Section 1515 K. Street, Sacramento, CA 94244-2550.

(c) Contents of Petition. The petition must identify (by name, address and relationship to the decedent) the persons entitled to distribution of the decedent's estate. If the personal representative is the petitioner, the petition may propose alternative entitlements.

(d) Genealogical Chart. The petition must include a genealogical chart establishing the relationships between the decedent and the decedent's heirs.

(e) Escheat. When the petition for probate states that heirs are unknown, there is a presumption of a possible escheat, and notice to the California Attorney General is required.

(Rule 10.45 [previously as, 10.74] new and effective January 1, 2008.)

10.46 PETITIONS FOR INSTRUCTIONS

(a) Limitations. The use of petitions for instructions by personal representatives is limited to those matters for which no other procedure is provided by statute.

(b) Specifying Instruction. The petition should state the instruction requested and should not be stated in the alternative.

(Rule 10.46 [previously as, 10.72] new and effective January 1, 2008.)

10.47 COLLECTION OF DAMAGES FOR WRONGFUL DEATH/PHYSICAL INJURY OR PROPERTY DAMAGE

(a) Wrongful Death Damages. Damages for wrongful death are held by the personal representative for the benefit of the statutory beneficiaries and are not part of the estate.

(b) Physical Injury or Property Damages. Damages for physical injury to the decedent or property damage are part of the estate. The cause of action or the settlement proceeds must be inventoried.

(c) Court Approval Required. Compromise or settlement of wrongful death or injury claims of the decedent must be approved by the court.

(Rule 10.47 [previously as, 10.117] new and effective January 1, 2008.)

10.48 PETITIONS FOR PRELIMINARY AND FINAL DISTRIBUTION

(a) Schedule of Creditors' Claims. Petitions for preliminary and final distribution must state, for each claim presented:

(1) Claimant's name;

(2) Date of filing of the claim;

(3) Nature of the claim;

(4) Amount of the claim;

(5) Disposition of the claim;

(6) If the claim was rejected, the date of service of the rejection and whether or not a lawsuit was filed.

(b) Medi-Cal Recipient. Petitions for distribution must contain allegations regarding whether or not the decedent received Medi-Cal benefits or was the surviving spouse of a person who received Medi-Cal benefits. If such benefits were received, notice must be given to the Director of Health Services and the claim period must have expired.

(c) Heir Confined In a Correctional Facility. Petitions for distribution must contain allegations regarding whether or not, the general personal representative or estate attorney knows or has reason to believe that an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections or Department of Youth Authority or confined in any county or city jail, road camp, industrial farm, or other correctional facility. If distribution will be made to such person, the petition for distribution must state that notice was given as provided in Probate Code, and whether or not the Director of the California Victim Compensation and Government Claims Board has demanded collection of any outstanding restitution fines or orders.

(Rule 10.48 [previously as, 10.69] new and effective January 1, 2008.)

10.49 PAYMENT OF COSTS OF ADMINISTRATION

A petition for final distribution or to terminate the proceeding must state that all charges for legal advertising, bond premiums, probate referee's services and costs of administration have been paid.

(Rule 10.49 [previously as, 10.108] new and effective January 1, 2008.)

10.50 ALLEGATIONS REGARDING CREDITORS

Petitions for approval of accounts, waivers of account or requesting distribution must state the efforts to locate known or reasonably ascertainable creditors and whether actual notice was given or required.

If actual notice to creditors was given the completed form of Notice of Administration To Creditors together with the proof of service must be filed with the Court. If there were no known or reasonably ascertainable creditors the petition must so state.

(Rule 10.50 [previously as, 10.107] new and effective January 1, 2008.)

10.51 MEDI-CAL NOTIFICATION

Petitions containing a request for distribution must allege compliance with notice to the Director of Health Services. Notice is not required when neither the decedent nor the decedent's predeceased spouse received Medi-Cal benefits, or when no claim will be made by the Department of Health Services because (1) the decedent died before June 28, 1981, (2) the decedent was under age 65 at date of death, (3) the decedent was survived by a spouse, minor child, or disabled child, or (4) the decedent's predeceased spouse died before June 30, 1993.

(Rule 10.51 [previously as, 10.116] new and effective January 1, 2008.)

10.52 INHERITANCE TAXES FOR DECEDENTS DYING BEFORE JUNE 8, 1982

When the decedent died before June 8, 1982, either an Inheritance Tax Report or a Certificate of No Tax Due is required.

Notice of filing of inheritance tax report must be given to those against whom a tax has been fixed and all beneficiaries of the estate.

An order fixing inheritance tax may be vacated as provided in Code of Civil Procedure section 473. After six months, the court is generally without jurisdiction to vacate the order except as provided in Revenue and Taxation Code section 13985 (repealed 1982), relating to allowance of deductions established or paid after the order fixing tax is made and Revenue and Taxation Code section 14672 (repealed 1982) relating to the correction of erroneous orders fixing tax occasioned by mistake, inadvertence or

excusable neglect.

(Rule 10.52 [previously as, 10.127 & 10.129] new and effective January 1, 2008.)

10.53 GUIDELINES FOR ATTORNEY COMPENSATION

Appendix C to Chapter 10 constitutes a compilation of statutory and case law concerning attorneys' compensation.

(Rule 10.53 [previously as, 10.142] new and effective January 1, 2008.)

10.54 ALLEGATION RE CHARACTER OF PROPERTY

In addition to those allegations required by California Rules of Court, Title 7, a petition for distribution must contain the allegations set forth in Rule 10.32(a) through (c) of this Chapter to establish the community or quasi-community character of assets. This rule may also apply when distribution is being made under Probate Code section 6402.5 when a portion of the estate is attributable to the decedent's predeceased spouse.

The allegations set forth in Rule 10.32(a) through (c) of this Chapter are not required if the surviving spouse is the sole heir or devisee.

(Rule 10.54 [previously as, 10.114] new and effective January 1, 2008.)

10.55 PROVISIONS RE SURVIVORSHIP

When a spouse's or domestic partner's right to take under a will is conditioned on survival for a specified period of time, no property will pass to the spouse or domestic partner until the expiration of the survivorship period. A Spousal Or Domestic Partner Property Petition may be filed prior to the expiration of the survivorship period. However, no order passing the property to the surviving spouse or domestic partner will be made prior to the expiration of the survivorship period.

(Rule 10.55 [previously as, 10.67] new and effective January 1, 2008.)

10.56 DESCRIPTION OF DISTRIBUTEES

(a) Names and Addresses. The names and addresses of all persons who are present and future distributees of the estate, and whether they are adults or minors, must be stated in all petitions for distribution. If distribution will not be made directly to the beneficiary, the name, address and fiduciary capacity of the recipient must be stated.

(b) Age of Minors and Others. In all cases where property will be distributed to a minor, the age and birth date must be stated in the petition and the order thereon. See Local Rule for distribution to minors.

If a trust beneficiary will receive distribution upon reaching a specific age, the petition and order thereon must state the age and birth date of the beneficiary.

(Rule 10.56 [previously as, 10.115] new and effective January 1, 2008.)

10.57 ORDERS ESTABLISHING TESTAMENTARY TRUSTS

(a) Appointment of Testamentary Trustee Prior To Distribution. Upon filing of a proper petition, the Court may appoint a testamentary trustee before the decree of distribution is made.

(b) Orders Establishing Testamentary Trusts. An order establishing a testamentary trust must incorporate the terms of trust in its entirety. The terms of the trust must be set forth in the present tense and in the third person instead of quoting from the will.

(Rule 10.57 [previously as, 10.121 & 10.184] new and effective January 1, 2008.)

10.58 DOCUMENTS TO BE ON FILE BEFORE ORDER FOR DISTRIBUTION OF DEVISE TO MINOR OR FIDUCIARY

(a) Distributions To Minors. When a minor is to receive a distribution from a decedent's estate the following must be filed in the decedent's estate proceeding prior to the hearing on the petition for distribution:

(1) When a guardian of the estate is required, a certified copy of Letters of Guardianship and a declaration concerning the adequacy of the guardian's bond.

(2) When the distribution does not exceed $5,000 and the property is to be delivered to the minor's parent, the written assurance of such parent that the value of minor's estate does not exceed $5,000 is required.

(3) When the transfer is to be made to a Custodian under the California Uniform Transfers To Minors Act, the written consent of the Custodian is required. The petition must state the minor's date of birth and if the distribution is to be delayed beyond the age of majority, the age for delivery of property to the minor.

(b) Distribution To Court Appointed Fiduciary. If beneficiary's distribution will be made to a court appointed fiduciary, a certified copy of the fiduciary's letters must be attached to the petition.

(Rule 10.58 [previously as, 10.120] new and effective January 1, 2008.)

10.59 POST DECEASED DISTRIBUTEES, DISTRIBUTION PURSUANT TO PROBATE CODE SECTION 13100 ET SEQ.

When distribution will be made to the successors in interest of a post deceased distributee pursuant to Probate Code section 13100 et seq., an affidavit or declaration, executed as required by Probate Code section 13101, must be filed with the Court which includes the following:

(a) Post Deceased Distributee Died Testate. If a post deceased distributee died testate, a statement that the decedent died testate and attaches an executed copy of the will;

(b) Post Deceased Distributee Died Intestate. If the post deceased distributee died intestate, a statement identifying the relationship of the heir(s) which establishes the affiant's or declarant's claim to distribution.

(Rule 10.59 [previously as, 10.125] new and effective January 1, 2008.)

10.60 ASSIGNMENT OR TRANSFER OF INTEREST IN ESTATE

(a) Notification To Court. If the personal representative knows of the existence of an assignment or transfer of an interest in the estate by an heir or devisee, any petition for distribution effecting that heir or devisee's interest in the estate must include an allegation concerning the specifics of the assignment or transfer.

(b) Written Assignment or Transfer of Interest. The written assignment or document of transfer, signed by the heir or devisee, must be filed with the Court.

(c) Distribution Care-of Attorney. The Court will not order distribution of an heir's or devisee's interest in the estate care-of his or her attorney, unless the written consent of the heir or devisee is filed with the Court.

(10.60 [previously as, 10.118] new and effective January 1, 2008.)

10.61 RECEIPTS OF DISTRIBUTION

(a) Distributee Receipts. A receipt of distribution shall be signed by the distributee personally. A receipt signed by an attorney-in-fact must have attached an executed copy of the power of attorney and a certification under penalty of perjury by the attorney-in-fact that the power of attorney is in full force and effect and authorizes said action.

(b) Recorded Deed or Order In Lieu of Distributee's Receipt. For real property, recordation of the order for distribution or the deed suffices as a receipt for distribution of the property.

(Rule 10.61 [previously as, 10.124] new and effective January 1, 2008.)

GUARDIANSHIP PROCEEDINGS

10.62 APPOINTMENT OF GUARDIANS

(a) Single Petition for Multiple Minors. A single petition for appointment of guardian must be used for multiple minors, if the minors are siblings and the same guardian(s) will be appointed for all minors.

(b) PRO 003 Must Be Filed with Petition. Los Angeles Superior Court form PRO 003, Notification to Court of Address on Conservatorships/Guardianship, must be submitted with the petition for appointment of guardian (or successor guardian), and at the time letters of guardianship are presented for issuance.

(c) Appointment of Non-Relative Guardians. When the petition requests the appointment of a non-relative as guardian of the

person, notice of hearing with a copy of the petition shall be mailed, at least 15 days prior to the hearing date, to:

Department of Children and Family Services

201 Centre Plaza Drive

Monterey Park, CA 91754

California Department of Social Services

744 P Street

Sacramento, CA 95814-6413

(Rule 10.62 [previously as, 10.157 & 10.158] new and effective January 1, 2008.)

10.63 GUARDIANSHIP ACCOUNTS OR WAIVERS OF ACCOUNTS

(a) Separate Accounting for Each Minor. When a guardian is appointed for more than one minor, the guardian must file a separate accounting for each minor.

(b) Waiver of Accounting When a Ward Reaches Majority. When a former ward, who has reached the age of majority, waives the final accounting of the guardian, the waiver may not be approved unless the ward is present at the hearing.

(Rule 10.63 [previously as, 10.161 & 10.162] new and effective January 1, 2008.)

CONSERVATORSHIP PROCEEDINGS

10.64 APPOINTMENT OF CONSERVATORS

(a) PRO 003 Must Be Filed with Petition. Los Angeles Superior Court form PRO 003, Notification to Court of Address on Conservatorships/Guardianship and its Addendum, must be submitted with the petition for appointment of conservator (or successor conservator), and at the time letters of conservatorship are presented for issuance.

(b) Appointment of Private Professional Conservators. When appointment of a Private Professional Conservator is sought, the petition must include the fiduciary's registration number and that a current registration form is on file with the Los Angeles Superior Court.

(Rule 10.64 [previously as, 10.168] new and effective January 1, 2008.)

10.65 LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIP

(a) LPS Conservatorship Proceedings. If the conservatee or proposed conservatee is currently under an LPS conservatorship, the petition must state the county where the LPS proceeding is or is pending, the case number and the name and address of the LPS conservator.

(b) Notice to LPS Conservator. Notice must be given to the LPS conservator in the same manner as required for relatives within the second degree.

(Rule 10.65 [previously as, 10.169] new and effective January 1, 2008.)

10.66 NOTICE OF ESTABLISHMENT OF CONSERVATORSHIP

The conservator of the estate must record a certified copy of letters of conservatorship with the county recorder in each county where real property of the estate is located, unless (a) in the case of a limited conservatorship, the conservator does not have the power to contract, or (b) the rights of the conservatee have been broadened pursuant to Probate Code section 1873 to include the power to enter into transactions, without prior order, concerning real property.

(Rule 10.66 [previously as, 10.174] new and effective January 1, 2008.)

10.67 CONSERVATORSHIP CARE PLAN

(a) LASC Form Care Plan. The Los Angeles Superior Court form "Conservatorship Care Plan" must be used when a conservator files his or her personal care plan as required by Probate Code section 2352.

(b) Mailing Copy of Conservatorship Care Plan to Court Investigator. When the Conservatorship Care Plan is filed with the Court, a copy must be mailed to the Court Investigator's Office, 111 N. Hill Street, Room 250, Los Angeles, CA 90012.

(Rule 10.67 new and effective January 1, 2008.)

10.68 COURT INVESTIGATOR'S ASSESSMENTS

The conservator's account and/or report shall state whether all court investigator's assessments have been paid. No final discharge will be granted until proof of payment is filed with the Court or payment of the assessments have been waived.

(Rule 10.68 [previously as, 10.178] new and effective January 1, 2008.)

10.69 RESIGNATION OF CONSERVATOR

(a) Effective Date of Resignation. A conservator may resign at any time. However, the resignation is not effective until approved by the Court and will not be approved until a successor conservator is appointed.

(b) Final Account of Resigning Conservator. A final account of a resigning conservator shall not be approved until a successor conservator is appointed and is served with notice of hearing and copy of the account and/or petition for its approval.

(Rule 10.69 [previously as, 10.179] new and effective January 1, 2008.)

10.70 NOTICES RE FINAL ACCOUNT UPON DEATH OF CONSERVATEE

Notice of hearing and a copy of the petition for settlement of a final account, upon the death of the conservatee, must be given to the personal representative, if any, of the deceased conservatee, and if none, to all known heirs at law, devisees and other successors in interest.

(Rule 10.70 [previously as, 10.170] new and effective January 1, 2008.)

RULES COMMON TO CONSERVATORSHIP PROCEEDINGS, GUARDIANSHIPS PROCEEDINGS AND/OR TRUSTS CREATED OR FUNDED BY COURT ORDER

10.71 CONSERVATOR'S OR GUARDIAN'S INDEPENDENT POWERS

A request for Probate Code section 2591 independent powers must justify the necessity for each power requested.

When the power to sell real property is granted, the sale must be returned to the Court for confirmation.

(Rule 10.71 [previously as, 10.153] new and effective January 1, 2008.)

10.72 INVENTORY AND APPRAISAL OF BENEFITS

If the ward or conservatee receives pension, Veterans, Social Security, welfare or other periodic benefits, such benefits must be included in the inventory.

(Rule 10.72 [previously as, 10.154] new and effective January 1, 2008.)

10.73 ACCOUNTS, REPORTS AND CONSERVATOR/GUARDIAN COMPENSATION

(a) Reconciliation of Financial Statements. When a closing balance reported in the "Property on Hand" schedule (at end of the accounting period) and/or an Inventory and Appraisal (for first accountings) does not agree with the balance reported in its corresponding financial statement, the account must include a schedule with a detailed reconciliation, including calculation and description of the reason for the difference.

(b) Allegation Regarding Sufficiency of Bond. The petition for approval of an account must state the amount of the current bond, if any, and whether an additional bond or reduction of bond is necessary.

(c) Allegation Regarding Blocked Accounts. The petition for approval of an account must state when funds are on deposit in a blocked account(s). Proof of deposit and the blocked account status must be filed.

(d) Insured Accounts. No account balance may be larger than the amount insured.

(e) Vesting of Accounts. Financial institution accounts must be vested in the name of the fiduciary (e.g., Joe Smith as

conservator of the estate of Margaret Smith).

(f) Court Investigator's Assessments. Petitions for approval of accounts must state whether or not the court investigator's assessments have been paid and if there are amounts unpaid, the amount due and owing. A receipt for payment must be filed before the account is approved unless the conservator has obtained an order deferring or waiving payment of the assessment.

(g) Conservator Compensation. When the conservator requests compensation, whether requested in a petition for approval of an account or in a separate petition, justification for the fees requested must be in the format set forth in Appendix D.

(h) Hearings for Approval of Conservatorship/Guardianship Accounts To Be Coordinated With Hearings For Approval of Trust Accounts. When the conservatee/ward is the settlor or a beneficiary of a trust that is subject to the Court's continuing jurisdiction and the conservator/guardian is the trustee or co-trustee of the trust, the trustee's accounting must be set for hearing on the same day as the conservatorship/guardianship accounting.

(Rule 10.73 [previously as, 10.155] new and effective January 1, 2008.)

10.74 ACCOUNTS AND INVENTORIES AND APPRAISALS - CONSERVATORS AND TRUSTEES OF TRUSTS SUBJECT TO THE COURT'S CONTINUING JURISDICTION

(a) Mailing Copies to the Court Investigator's Office. Conservators of the estate and trustees of trusts funded by court order, or trusts otherwise subject to the Court's continuing jurisdiction (but not including testamentary trusts subject to the Court's jurisdiction pursuant to Probate Code section 17300), must mail, or cause to be mailed, copies of all accountings and Inventories and Appraisals filed with the Court to the Court Investigator's Office, 111 N. Hill Street, Room 250, Los Angeles, CA 90012. Copies of the financial statements, escrow statements and billing statements from residential care or long term care facilities, required by Probate Code section 2620, need not be attached to the mailed copies to the Court Investigator.

(b) Lodging Original Financial Statements with the Court. All original financial account statements submitted by Private Professional Fiduciaries in support of their accountings, as required by Probate Code section 2620, must be lodged with the Court separately from the accounting. When lodging these documents with the Court a caption page must be affixed to the documents. The caption page must include: the case name; the case number; the date, time, and place of the hearing; the name and address of the fiduciary and his or her attorney; a statement regarding the total number of pages (including the cover sheet) submitted; and a declaration, under penalty of perjury, stating the financial statements attached are the originals. Several documents may be filed under a single captioning page. To facilitate return of the original documents, the fiduciary must submit, at the time of filing, a self addressed postage pre-paid envelope or written instructions or authorization for pick-up by the fiduciary or his or her designee. Retention and return of financial documents shall be as follows:

(1) Districts with Probate Scanning. Statements scanned by the Court shall constitute the Court's permanent record of such documents. After the financial statements are scanned, the Clerk is authorized to return these documents to the Private Professional Fiduciary. To facilitate scanning the documents must be loosely bound and not stapled.

(2) Districts without Probate Scanning. The Court will return the financial statements to the Private Professional Fiduciary after the order approving the fiduciary's accounting becomes final. At that time, the original documents will be returned to the depositing fiduciary or any successor appointed by the Court.

(Rule 10.74 [previously as, 10.180.1] new and effective January 1, 2008.)

TRUST PROCEEDINGS

10.75 MULTIPLE PROBATE CODE SECTION 17200 ET SEQ. PETITIONS CONCERNING ONE TRUST

All petitions filed under Probate Code section 17200 et seq., which relate to the same trust, must be filed under the same case number.

Each petition filed under Probate Code section 17200 et seq., whether or not filed in the same case file, must contain facts necessary to support the jurisdiction of the Court and requires a new initial filing fee for each petition.

(Rule 10.75 [previously as, 10.181.1] new and effective January 1, 2008.)

10.76 PETITIONS TO CONFIRM SALE OF TRUST REAL PROPERTY

When a trustee seeks court confirmation of sale of trust real property, the sale must comply with the provisions of Probate Code section 10300 et seq. The trustee is required to publish notice of intention to sell real property unless: the trust gives the trustee the power to sell real property; the trust directs the property to be sold; or, the value of the property does not exceed $5,000

(Prob. Code, § 10301).

(Rule 10.76 new and effective January 1, 2008.)

10.77 SETTLEMENTS INVOLVING CHARITABLE TRUSTS

The Attorney General must be a party to a petition to modify or terminate a trust for charitable purposes.

(Rule 10.77 [previously as, 10.78] new and effective January 1, 2008.)

10.78 TESTAMENTARY TRUSTEES' ACCOUNTS

The starting balance of the first account of a testamentary trustee must conform to the trustee's receipt(s) on file in the decedent's estate proceeding.

(Rule 10.78 [previously as, 10.181] new and effective January 1, 2008.)

SETTLEMENTS OR JUDGMENTS INVOLVING MINORS OR PERSONS WITH DISABILITIES, TRUSTS FUNDED OR ESTABLISHED PURSUANT TO COURT ORDER

10.79 SETTLEMENTS OR JUDGMENTS RELATING TO CLAIMS OF MINORS OR PERSONS WITH DISABILITIES (INCLUDING ESTABLISHMENT AND FUNDING OF TRUSTS)

When there is a judgment or settlement of claim(s), including a covenant not to sue, relating to a minor or person with a disability, as defined by Probate Code section 3603, the procedures set forth in this rule shall apply. (Also see Code Civ. Proc., § 372; Prob. Code, § 2500 et seq.; Prob. Code, § 3500, Prob. Code, §§ 3600 to 3612; Title 7, Section 7.10 of the Standards of Judicial Administration; and, California Rules of Court, tit. 3, div. 12, rule 3.1384 and tit. 7, chap. 20).

(a) Proper Court To Approve Settlement.

(1) No Civil Action Pending. If no civil action is pending, the settlement must be approved by the Probate Court as provided in Probate Code sections 2505(b) and 3500.

(2) Pending Civil Action. If settlement for a minor or a person with a disability is reached in a pending civil action, the settlement must be approved in the court in which the action is pending (see Prob. Code, § 2505(a).).

(b) Disposition of Proceeds. Proceeds from a settlement or judgment may be handled in the following manner [except for settlements made pursuant to Probate Code section 3500(d)]:

(1) Distribution to a parent of a minor. Probate Code sections 3611(e) and 3400 et seq.;

(2) Distribution to one or more insured blocked accounts deposited in financial institutions in this state, Probate Code section 3602(c)(1). Deposits in financial institutions covered by FDIC insurance must not exceed the amount covered;

(3) Distribution to a guardian or conservator of the estate after filing of appropriate bond. Probate Code sections 3602(b) and 3611(a);

(4) Distribution to a custodian under the Uniform Transfers to Minors Act, who may be required to place the funds into a blocked account or be bonded in the amount required by Probate Code section 2320 et seq. Probate Code sections 3602(c) and 3611(f);

(5) Purchase of a single-premium deferred annuity. Probate Code sections 3602(d) and 3611(b);

(6) Creation and distribution to a Special Needs Trust. Probate Code sections 3602(d) and 3611(c);

(7) Creation and distribution to a trust for a minor that is revocable at age 18. Probate Code sections 3602(c)(3) and 3611(g).

(c) Petition to Compromise Claim:

(1) Petition to Comply With California Rules of Court. A petition for approval of the compromise of a claim of a minor or a person with a disability is subject to the provisions of California Rules of Court, title 7, rules 7.950 and 7.951. Use of Judicial Council forms is required; see California Rules of Court, title 7, rule 7.101.

(2) Appointments of Guardians Ad Litem. The Court may appoint a guardian ad litem for the minor or person with a disability

to review the settlement (CCP §373 and Prob C §1003).

(3) Attorney's Fee, Costs and Expenses. At the time of hearing, the Court shall determine the amounts of attorneys fees, costs and expenses to be allowed from the proceeds of the settlement, see California Rules of Court, title 7, rule 7.955. Except where good cause is shown, the attorney's fees shall not exceed an amount equal to twenty-five percent (25%) of the gross proceeds of settlement, or, if applicable, the amount determined under Business and Professions Code section 6146, whichever is less. When attorney's fees are requested, a declaration from the attorney explaining the basis for the requested fees must be attached to the Petition to Approve the Compromise. The declaration must be in the form required in California Rules of Court, title 7, rule 7.702 subdivisions (1) to (6). If the settlement includes the purchase of a single-premium deferred annuity, attorney's fees shall be calculated based on the premium amount of the annuity and not the total payments to be made.

(4) Annuities. When the settlement includes the purchase of a single-premium deferred annuity, an exemplar of the proposed annuity contract and schedule of payments to be made pursuant to the contract shall be attached to the petition. The annuity shall provide that the contingent beneficiary is the minor's or the person with a disability's estate. The rating of the company issuing the annuity shall be disclosed in the petition.

(5) Establishment of Special Needs or Other Trusts. When the settlement proposes the establishment of a special needs or other trust as provided in Probate Code sections 3600 to 3612, the terms of the proposed trust shall be reviewed by the Probate Department. The terms of the trust shall include the provisions required in California Rules of Court, title 7, rule 7.903, and Los Angeles Superior Court Local Rules, chapter ten, rule 10.80.

(e) Orders:

(1) Order Approving Compromise of Claim. Judicial Council form "Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person with a Disability" is required.

(2) Orders Establishing Trusts. When the order establishes a trust, the order shall be a long form attorney order, setting forth the provisions of the trust in their entirety.

(f) Post Judgment Procedures:

(1) Commencement of Trust Proceeding. The order approving the settlement shall provide, as a condition to final approval of the settlement, that the trustee(s) commence a separate trust proceeding with a probate case number in this county. A certified copy of the order establishing the trust, together with a copy of the trustee's bond(s), shall be filed with the court by presenting said documents with a caption page, identifying the trust, for assignment of a probate case number.

(2) Establishment of Blocked Accounts: A certified or file endorsed copy of the Judicial Council form "Order To Deposit Money Into Blocked Account" must be delivered to the financial institution. The Judicial Council form "Receipt and Acknowledgment of Order for the Deposit of Money to Blocked Account" shall be signed by the depository and promptly filed with the court, California Rules of Court, title 7, rule 7.953. It is the duty of the attorney to assure that funds are deposited in accordance with the order. Attorney's fees shall not be paid until the money is deposited in the blocked account and the receipt is filed with the court.

(3) Withdrawal of Funds from Blocked Account: A Judicial Council form "Petition for Withdrawal of Funds from Blocked Account" shall be filed and presented to the Probate Department of the Superior Court. Petitions may be presented ex parte. Contact The Minor's Account Section, located in the Stanley Mosk Courthouse, 111 N. Hill Street, Room 260, Los Angeles, CA 90012 or (213) 974-5519 concerning Central District cases.

When withdrawal is sought because the minor has reached majority and the "Order To Deposit Money Into Blocked Account" is self executing, i.e., provides for release when minor attains the age of 18, the court has no further involvement. The former minor must contact the financial institution directly for release of funds.

(Rule 10.79 [previously as, 10.186.2, 10.187, 10.188, 10.188.1 &10.189] new and effective January 1, 2008.)

10.80 TRUSTS CREATED OR FUNDED PURSUANT TO COURT ORDER INCLUDING CIVIL JUDGMENT

(a) Trusts Created or Funded By Court Order. Trusts created or funded by court order, including trusts created pursuant to Probate Code sections 2580 et seq. ("substituted judgment"), 3100 et seq. (relating to particular transactions for disabled spouses or registered domestic partners), and 3600 et seq. (relating to the compromises of claims of minors and persons with disabilities) are subject to California Rules of Court, title 7, rule 7.903. All such trusts shall include provisions for protection of the trust assets against misuse and for continuing supervision by the court. Except as provided in subsection (c) herein, unless the court otherwise orders for good cause shown, trusts created or funded by court order must:

(1) not contain a no-contest provision;

(2) prohibit modification or revocation without court approval;

(3) clearly identify the trustee and any other person(s) with authority to direct the trustee to make disbursements;

(4) prohibit investments by the trustee other than those permitted under Probate Code section 2574;

(5) require persons identified in subdivision (3) to post bond in the amount required under Probate Code section 2320 et seq.;

(6) require the trustee to file accounts and reports for court approval in the manner as frequency required by Probate Code sections 1060 et seq. and 2320 et seq.;

(7) require court approval of changes in trustees and a court order appointing any successor trustee;

(8) require compensation of the trustee, the members of any advisory committee and the attorney for the trustee to be just and reasonable amounts, to be fixed and allowed by prior order of court. The trust may provide for periodic payments of compensation on account, subject to the requirements of Probate Code section 2643 and California Rule of Court, title 7, rule 7.755.

(b) Additional Trust Requirements. The court may also require that the trust include the following provisions:

(1) When the trustee is a trust company (as defined in Financial Code section 107) and it petitions for fees, the petition shall include a complete disclosure of any fees paid to a fiduciary and/or any affiliate as required by Probate Code section 16015 and Financial Code section 1561.1;

(2) Any purchase of a personal residence for a beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships, Probate Code section 2571;

(3) Any sale of a personal residence of the beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships, Probate Code section 2540(b). Such sales must be returned to court for confirmation [See Probate Code section 10300 et seq.];

(4) The trustee may not borrow money, lend money, give security, lease, convey, or exchange any property of the estate without prior authorization by order of the court, Probate Code section 2550.

(c) Rule Does Not Apply to Trusts Under $20,000. Unless the court otherwise orders for good cause shown, the requirements of subdivision (a) paragraphs (5) to (8) and subdivision (b) of this rule do not apply to trust instruments or trusts that will have a total asset value of $20,000 or less, after receipt of the net proceeds of the proposed settlement or judgment.

(Rule 10.80 [previously as, 10.186] new and effective January 1, 2008.)

10.81 SPECIAL NEEDS TRUST CREATED BY COURT ORDER/JUDGMENT

A special needs trust is intended to allow the beneficiary to continue to maintain eligibility for certain needs-based government benefits, such as SSI or Medi-Cal. Special needs trusts typically contain limitations on the ability to use trust assets to pay for the food, shelter, clothing and utilities of the beneficiary, so that eligibility for government benefits will not be impaired (see, 20 C.F.R. section 416.1130 et seq., and 22 Cal. Code Regs. section 50509 et seq.).

When special needs trusts are established by court order, federal law generally requires that the trust provide that upon termination, Medi-Cal or any other Medic-aid agency which has paid benefits to the beneficiary shall receive all amounts remaining in the trust up to an amount equal to the benefits paid (42 U.S.C. 1396p(d)(4)(A)). The Department of Health Services promulgates general guidelines regarding special needs trusts. These guidelines can be obtained by contacting the Department of Health Services.

(Rule 10.81 [previously as, 10.186 & 10.186.1] new and effective January 1, 2008.)

10.82 NEW COURT PROCEEDINGS REQUIRED FOR TRUSTS ESTABLISHED UNDER PROBATE CODE SECTION 2580 OR 3100

When a trust is created under Probate Code section 2580 et seq. in a conservatorship proceeding, or Probate Code section 3100 et seq., all future proceedings relating to that trust must be filed as a new separate case.

(Rule 10.82 [previously as, 10.181.1(a)] new and effective January 1, 2008.)

PROBATE VOLUNTEER PANEL ATTORNEYS

10.83 PROBATE VOLUNTEER PANEL GENERAL ELIGIBILITY REQUIREMENTS AND PROCEDURES FOR APPOINTMENT TO THE PANEL

All Probate Volunteer Panel (PVP) Attorneys must meet the following General Requirements:

(a) Active Status with the State Bar. PVP Attorneys must have maintained active status with the State Bar of California for each of the preceding three years and have no disciplinary proceedings pending and none filed against him/her during the preceding twelve months.

(b) Submit Application and Compliance Statement. PVP Attorneys must complete and submit the following:

(1) An Application for Appointment to the Probate Volunteer Panel.

(2) A Compliance Statement with the Application, and annually thereafter.

These forms may be obtained on-line at www.lasuperiorcourt.org, see "Probate", from the Superior Court Probate Department, located at 111 N. Hill Street, Room 258, Los Angeles, California, or by calling (213) 974-5471.

(c) Educational and MCLE Requirements.

(1) All Attorneys must complete at least twelve hours of MCLE, during his/her State Bar reporting period, in areas of decedent estates, conservatorships/guardianships or trust administration.

(2) Completion of the mandatory Probate Volunteer Panel training course(s) within one year from submission of his/her application.

(d) Professional Liability Insurance. All Probate Volunteer Panel Attorneys must carry Professional Liability Insurance with policy limits consistent with the value of the matters handled, and at a minimum an amount of $100,000 per claim and $300,000 per year.

(Rule 10.83 [previously as, 10.173.4] new and effective January 1, 2008.)

10.84 PROBATE VOLUNTEER PANEL—REQUIREMENTS FOR SPECIFIC AREAS OF INTEREST

(a) General Requirements for Specific Areas of Interest. PVP Attorneys must meet the following general requirements for specific area(s) of interest:

(1) Decedent Estate and Trust Administration. Prior to filing the application and within the past three years, the Attorney must have represented parties in at least six different probate or trust administration court proceedings, including three decedent estate or trust proceedings from inception through final account and/or order for distribution.

The Attorney must have experience and/or training in tax-related issues sufficient to enable the Attorney to identify tax issues from the facts of the case and to competently represent the client's interests concerning the potential tax consequences of the particular matter.

(2) Conservatorships and Guardianships of Estates. Prior to filing the application and within the past three years, the Attorney must have represented parties in at least four conservatorship/guardianship of estate matters, including at least two proceedings from inception, which involve securing the appointment and qualification of the conservator or guardian of the estate.

(3) Guardianships of the Person. Prior to filing the application and within the past five years, the Attorney must have represented parties in at least four guardianship of the person matters or, in the alternative, have participated as a volunteer in a Superior Court Guardianship Clinic on a regular basis. It is suggested that the Applicant have experience in family law custody matters.

(4) Conservatorships of the Person. Prior to filing the application and within the past five years, the Attorney must have represented parties in at least four conservatorship of the person matters, including at least two proceedings from inception, which involve securing the appointment and qualification of the conservator of the person.

(5) Limited Conservatorships/Conservatorships for Adults with Developmental Disabilities. Prior to filing the application and

within the past three years, the Attorney must have comprehension of the legal and medical issues arising out of developmental disabilities and an understanding of the role of the Regional Center.

(6) Estate Planning and Taxation. Prior to filing the application and within the past three years, the Attorney must have extensive experience in matters regarding estate planning, estate, gift, or income tax or related tax matters pertaining to trusts and decedent estates. The Attorney must have represented parties in at least three substituted judgment (Prob. Code, § 2580 et seq.) or particular transactions matters (Prob. Code, § 3100 et seq.)

(7) Medi-Cal Planning. Prior to filing the application and within the past three years, the Attorney must have represented parties in at least three Probate Code section 3100 petitions, including at least two in which there was a request to increase either the Community/Spouse Resource Allowance and/or increase the Minimum Monthly Maintenance Need Allowance. The Attorney must be familiar with the laws and regulations relating to Medi-Cal eligibility, and specifically shall be knowledgeable and up to date on the rules regarding the increase of the CSRA/MMMNA, exempt assets, gifting rules, and tax ramifications related to Medi-Cal planning.

(8) Compromises/Judgments and Special Needs Trusts for Minors/Persons with Disabilities. Prior to filing the application and within the past three years, the Attorney must have represented parties in at least three petitions for approval of compromise under Probate Code section 3500 or Code of Civil Procedure section 372, three of which involved creation of special needs trusts. The Attorney must be familiar with the advantages and disadvantages of the various funding alternatives available under Probate Code section 3600 et seq., and with the application of MICRA to medical malpractice settlements. Applicants may be expected to appear in civil proceedings.

(9) Fiduciary Appointments/Guardians ad Litem. The Attorney must have at least ten years in practice, with recent experience serving as a fiduciary or guardian ad litem.

Warning: Professional Liability Insurance coverage may not cover an attorney who acts as a guardian ad litem or fiduciary. Although professional liability insurance is not a requirement while acting as a guardian ad litem, PVP attorneys may wish to consult their professional liability insurance carrier to determine coverage prior to accepting such appointments.

(10) Evidence Code Section 730 Experts/Referees/Special Masters. The Attorney must have at least ten years in practice, with experience serving as an Evidence Code section 730 expert, or CCP 638 referee or special master. The Applicant also must have substantial expertise in the substantive area of the law involved in the matter.

(11) Health Care Decisions for Adults Without Conservators and Tuberculosis Detention Proceedings/Capacity Determinations. Prior to filing the application and within the past three years, the Attorney must have extensive experience in matters relating to medical treatment and bio-ethical issues. The Attorney must be familiar with Probate Code section 3200 or Health and Safety Code section 121365 proceedings. Because these cases often involve complex treatment issues, the Attorney is expected to become familiar with the medical parameters underlying these issues in order to adequately represent the client's interests. These cases often involve medical emergencies with complex bio-ethical issues, and may require immediate attorney response.

(b) MCLE Requirements for Specific Areas of Interest. PVP Attorneys must meet the following MCLE requirements for specific area(s) of interest:

(1) Conservators or Guardians of Estate. The Attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the Applicant's State Bar reporting period.

(2) Conservatorship of the Person. The Attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the Applicant's State Bar reporting period.

(3) Estate Planning and Taxation. The Attorney must have at least ten hours of MCLE in the areas of estate planning and taxation during the Attorney's State Bar reporting period.

(4) Limited Conservatorships/Conservatorships for Developmentally Disabled Adults. The Attorney must have at least three hours of MCLE in the areas of guardianships/ conservatorships during the Attorney's State Bar reporting period, and have attended the Limited Conservatorships PVP Training Program.

(5) Medi-Cal Planning. The Attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the Attorney's State Bar reporting period.

(6) Compromises/Judgments and Special Needs Trust for Minors/Incompetent Adults. The Attorney must have at least three hours of MCLE in the areas of guardianships/ conservatorships during the Attorney's State Bar reporting period.

(7) Health Care Decisions for Adults Without Conservators and Tuberculosis Detention Proceedings/Capacity Determinations.

The Attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the Attorney's State Bar reporting period.

(Rule 10.84 [previously as, Appendix E] new and effective January 1, 2008.)

10.85 ETHICAL GUIDELINES

Court appointed counsel's (PVP counsel's) primary duty is to represent the interests of his/her client in accordance with applicable laws and ethical standards. The PVP attorney's secondary duty is to assist the court in the resolution of the matter to be decided. The PVP attorney must, if practical, ensure that the client is afforded an opportunity to address the court directly.

(Rule 10.85 [previously as, Appendix E] new and effective January 1, 2008.)

10.86 PVP ATTORNEY APPOINTMENTS ARE PERSONAL

PVP Attorney appointments are personal and cannot be delegated. Only the panel attorney appointed by the Court may render legal services to the client and appear at the court hearing.

(Rule 10.86 new and effective January 1, 2008.)

10.87 WRITTEN REPORTS AND COMPENSATION FOR COURT-APPOINTED ATTORNEYS

(a) Written Reports. Court-appointed counsel must file a written report with the Court, the report shall include a statement, verified by counsel stating:

(1) That the PVP attorney is an active member of the State Bar of California and no disciplinary actions are pending and none were filed against him/her during the past twelve months.

(2) That the PVP attorney has professional liability insurance coverage in effect with policy limits consistent with the value of the matter being handled.

(3) That the PVP attorney does not, or has not, represented any party to the proceeding, except as otherwise stated in the report. The statement must include the name of the party and a brief explanation. Note: include cases where PVP counsel represents or has represented a private professional conservator.

(b) Compensation for PVP Attorneys. Requests for compensation of court-appointed attorneys should be made as part of the written report filed with the Court or otherwise orally in Court at the hearing.

(1) If the request for compensation is for services in excess of five hours, it must be supported by a written fee declaration and served upon the appearing parties. The request for fees must contain a schedule of services rendered specifying each date, nature of the service rendered, and the time devoted to that service.

(2) The Court appointed attorney will be awarded compensation at a reduced hourly rate, except in cases involving unusual problems requiring extraordinary expertise.

(3) The Court may order the fees to be paid by the estate or party(ies) or, when authorized by statute, by the county to the extent the Court determines the person is unable to pay. A form request for the PACE county-paid compensation may be obtained from the courtroom clerk.

(4) If no court appearance is required of the Court-appointed attorney, a petition for compensation should be filed and set for hearing in the ordinary manner.

(Rule 10.87 [previously as, 10.173.1 & 10.173.2] new and effective January 1, 2008.)

APPENDIX A
COMMONLY USED ABBREVIATIONS

Acct	Account	LASC Ch 10	Chapter 10 of Los Angeles Superior Court Rules
Admin	Administrator	Ltd	Limited
Admin CTA	Administrator with Will Annexed	Ltrs	Letters
Aff	Affidavit/Prob C 8100 Ntc	M.O	Minute Order
A.O.	Attorney Order	Ntc	Notice

Apprl	Appraisal
ARA	Account, Report, Acts
Auth	Authority/Authorize
Bene	Beneficiary
Cite	Citation
Cod	Codicil
Consee	Conservatee
Consr	Conservator
Cont	Continue
C/P	Community property
Cal Rules of Ct	California Rules of Court, Title 7 [Probate]
DCFS	Department of Children and Family Services
D/D	Date of Death
Decd	Decedent/deceased
DHS	Department of Health Services
DMH	Department of Mental Health
Dist	Distribution
DOB	Date of Birth
DSS	Department of Social Services
DWOP	Deny without prejudice
Ex	Extraordinary
Extr	Executor
FBO	For Benefit of
FMV	Fair market value
GAL	Guardian ad Litem
Gdn	Guardian
Holo	Holographic
IAEA	Independent Administration of Estates Act
I&A	Inventory & Appraisal
ITF	In Trust For
J/T	Joint Tenancy
JTD	Judge To Determine
Juris	Jurisdiction
NTE	Not To Exceed
Objs	Objections
Objr	Objector
O/C	Off Calendar
OTR	Ordered To Return
o/w	Otherwise
PA	Public Administrator
P&E	Person & Estate
Pers Rep	Personal Representative
Petnr	Petitioner
Prob C	Probate Code
P/P	Personal property
Pub	Publication
PVP	Probate Volunteer Panel Attorney
R/A	Request of Attorney
Reapprl	Reappraisal
RFA	Recommended for Approval
R/P	Real property
R/A	Request of Attorney
Reapprl	Reappraisal
RFA	Recommended for Approval
R/P	Real property
S/P	Separate Property
Spec	Admin Special Administrator
Spec	Ntc/copy Special Notice & Copy
Stat	Statutory
Succ	Successor
Supp req	Supplement required
Tee	Trustee
Temp	Temporary
Tr	Trust
T/T	Take Testimony
VA	Veteran's Administration

APPENDIX B
TABLE OF INCORPORATED CITIES

	Name of City	**Date of Incorporation**
1.	Agoura Hills	Dec. 8, 1982
2.	Alhambra	July 11, 1903
3.	Arcadia	Aug. 5, 1903
4.	Artesia	May 29, 1959
5.	Avalon	June 26, 1913
6.	Azusa	Dec. 29, 1898
7.	Baldwin Park	Jan. 25, 1956
8.	Bell	Nov. 7, 1927
9.	Bell Gardens	Aug. 1, 1961
10.	Bellflower	Sept. 3, 1957
11.	Beverly Hills	Jan. 28, 1914
12.	Bradbury	July 26, 1957
13.	Burbank	July 15, 1911
14.	Calabasas	Apr. 5, 1991
15.	Carson	Feb. 20, 1968
16.	Cerritos (See No. (d))	Apr. 24, 1956
17.	Claremont	Oct. 3, 1907
18.	Commerce	Jan. 28, 1960

19.	Compton	May 11, 1888
20.	Covina	Aug. 14, 1901
21.	Cudahy	Nov. 10, 1960
22.	Culver City	Sept. 20, 1917
23.	Diamond Bar	Apr. 18, 1989
24.	Downey	Dec. 17, 1956
25.	Duarte	Aug. 22, 1957
26.	El Monte	Nov. 18, 1912
27.	El Segundo	Jan. 18, 1917
28.	Gardena	Sept. 11, 1930
29.	Glendale	Feb. 15, 1906
30.	Glendora	Nov. 13, 1911
31.	Hawaiian Gardens	Apr. 14, 1964
32.	Hawthorne	July 12, 1922
33.	Hermosa Beach	Jan. 10, 1907
34.	Hidden Hills	Oct. 19, 1961
35.	Huntington Park	Sept. 1, 1906
36.	Industry	June 18, 1957
37.	Inglewood	Feb. 14, 1908
38.	Irwindale	Aug. 6, 1957
39.	La Canada-Flintridge	Dec. 8, 1976
40.	La Habra Heights	Dec. 4, 1978
41.	Lakewood	Apr. 16, 1954
42.	La Mirada (See No. (a))	Mar. 23, 1960
43.	Lancaster	Nov. 22, 1977
44.	La Puente	Aug. 1, 1956
45.	La Verne (See No. (b))	Sept. 11, 1906
46.	Lawndale	Dec. 28, 1959
47.	Lomita	Jun. 30, 1964
48.	Long Beach (See No. (c))	Dec. 13, 1897
49.	Los Angeles	Apr. 4, 1850
50.	Lynwood	July 16, 1921
51.	Malibu	Mar. 28, 1991
52.	Manhattan Beach	Dec. 7, 1912
53.	Maywood	Sept. 2, 1924
54.	Monrovia	Dec. 15, 1887
55.	Montebello	Oct. 15, 1920
56.	Monterey Park	May 29, 1916
57.	Norwalk	Aug. 26, 1957
58.	Palmdale	Aug. 24, 1962
59.	Palos Verdes Est.	Dec. 20, 1939
60.	Paramount	Jan. 30, 1957
61.	Pasadena	June 19, 1886
62.	Pico Rivera	Jan. 29, 1958
63.	Pomona	Jan. 6, 1888
64.	Rancho Palos Verdes	Sept. 7, 1973
65.	Redondo Beach	Apr. 29, 1892
66.	Rolling Hills	Jan. 24, 1957
67.	Rolling Hills Est.	Sept. 18, 1957
68.	Rosemead	Aug. 4, 1959
69.	San Dimas	August 4, 1960
70.	San Fernando	Aug. 31, 1911
71.	San Gabriel	Apr. 24, 1913
72.	San Marino	Apr. 25, 1913
73.	Santa Clarita	Dec. 15, 1987
74.	Santa Fe Springs	May 15, 1957
75.	Santa Monica	Dec. 9, 1886
76.	Sierra Madre	Feb. 7, 1907
77.	Signal Hill	Apr. 22, 1924
78.	South El Monte	July 30, 1958
79.	South Gate	Jan. 15, 1923

80.	South Pasadena	Feb. 29, 1888
81.	Temple City	May 25, 1960
82.	Torrance	May 12,1921
83.	Vernon	Sept. 22, 1905
84.	Walnut	Jan. 19, 1959
85.	West Covina	Feb. 17, 1923
86.	West Hollywood	Nov. 29, 1984
87.	Westlake Village	Dec. 11, 1981
88.	Whittier	Feb. 28, 1898

(a) Incorporated March 23, 1960 as City of Mirada Hills. Name changed to La Mirada on December 15, 1960 (approved by voters November 8, 1960, filed with Secretary of State on December 15, 1960).

(b) Incorporated September 11, 1906 as City of Lordsburg. Name changed to La Verne on August 24, 1917.

(c) First incorporated on February 10, 1888, disincorporated July 24, 1896. Second incorporation effective December 13, 1897. (Long Beach)

(d) Name changed from Dairy Valley to Cerritos, March 1, 1966.

INCORPORATED CITIES NOW CONSOLIDATED

Barnes City	February 13, 1926	Los Angeles	April 11, 1927
Belmont Hgts.	October 9, 1908	Long Beach	November 24, 1909
Eagle Rock	March 1, 1911	Los Angeles	May 17, 1923
Hollywood	November 9, 1903	Los Angeles	February 7, 1910
Hyde Park	May 12, 1921	Los Angeles	May 17, 1923
San Pedro	March 1, 1888	Los Angeles	August 28, 1909
Sawtelle	November 26, 1906	Los Angeles	July 13, 1922
Tropico	March 15, 1911	Glendale	January 9, 1918
Tujunga	May 1, 1925	Los Angeles	March 7, 1932
Venice*	February 17, 1904	Los Angeles	November 25, 1925
Watts	May 23, 1907	Los Angeles	May 29, 1926
Wilmington	December 27, 1905	Los Angeles	August 28, 1909

*Incorporated as City of Ocean Park on February 17, 1904. Name changed to Venice June 2, 1911.

Compiled by the Executive Office, Clerk of the Board of Supervisors

APPENDIX C
LOS ANGELES SUPERIOR COURT GUIDELINES ON
ATTORNEY COMPENSATION AND COSTS IN DECEDENTS' ESTATES

PART A, ATTORNEY SERVICES NOT COMPENSABLE FROM ESTATE

1. No Attorneys Compensation Allowed

1.1 Services Rendered-Not Legal

1.1.1 Duties of personal representative (to be paid by personal representative from own funds) *Estate of Brignole*, 133 C 162, 65 P 294 (1901) Accord, *Estate of Parker*, 200 C 132, 251 P 907 (1926)

1.1.2 Exception: Accounting for deceased, incompetent or absconding personal representative (Probate Code section 10953)

1.1.3 Exception: Separate Agreement. Personal representative may hire attorney to perform duties of representative and separately compensate attorney from his or her own funds (not estate's)

Estate of Parker, supra

Estate of Brignole, supra

Ethics Opinions of Los Angeles County Bar Association, Opinion No. 347 (April 24, 1975) (hereafter "Opinion 347")

1.1.3a Whenever compensation is to be charged directly to the client, must comply with the formality requirements of Bus & P C Section 6148

1.1.3b If such a contract is entered into, attorney must comply with Rule 3-300 of California Rules of Professional Conduct

1.1.3c Written agreement, must set forth:

(a) basis of compensation

(b) consent of representative

(c) subject to Court approval

(d) compliance with Opinion 347 and Rule 3-300

(See sample form of agreement in PART 3, Sec. 12.1.)

1.1.3d File with court when first compensation petition filed; Court orders compensation to representative, less amount to attorney for doing representative's work

1.1.3e Compare *Estate of Haviside*, 102 CA3d 365; 162 CR 393 (1980), which does not bar a representative from rendering professional accounting services to the estate and being paid therefor. Allows "double compensation" in this limited instance.

1.1.4 If representative's compensation waived, no compensation payable to attorney for representative's work

1.2 Agreement Not to Charge

1.2.1 Post-death continuance of litigation at no cost as per agreement

In re Barreiro's Estate, 125 CA 752, 14 P2d 786 (1932)

Agreement of attorney before decedent died that payment already received for litigation was payment in full and there would be no further charges for that litigation.

1.2.2 Waiver of all or part of statutory compensation *Estate of Carver*, 123 C 102, 55 P 770 (1898). If representative waives compensation, he or she cannot later claim it unless waiver withdrawn with consent of court. By analogy, same rule should apply to attorney.

1.3. Agreement for performance of extraordinary services on contingent fee basis is subject to the following conditions:

1.3.1a The Agreement is in writing and complies with all requirements of §6147 of the Business and Professions Code.

1.3.1b The Agreement is approved by the Court following a hearing noticed as provided in §10812.

1.3.1c The Court determines that the proposed compensation is just and reasonable and that the Agreement is to the advantage of the estate and in the best interests of the persons who are interested in the estate. See Probate Code §10811(c).

1.3.2 Prior case law obsolete. By reason of the 1991 legislative amendments to Probate Code §10811(c), earlier cases holding that contingent fee contracts are not appropriate in probate cases no longer state the governing law. (See, e.g., *Estate of Kerr*, 63 C2d 875, 48 CR 707 (1966); *Estate of Hastings*, 108 CA2d 713, 239 P2d 684 (1952).)

1.4 Services Rendered Before Probate Opened

1.4.1 *In re Lagersen's Estate*, 210 CA2d 788, 26 CR 783 (1963)

1.4.2 *Estate of Tubbs*, 82 CA2d 305, 186 P2d 7 (1947)

1.4.3 Exception: Successful defense of a will which is contested before it is admitted to probate (Probate Code sections 8004, 8250)

Estate of Schuster, 163 CA3d 337, 209 CR 289 (1984)

1.5 Unethical Conduct

1.5.1 Violating the Rules of Professional Conduct and the State Bar Act, etc.

1.5.2 Services adverse to estate

1.5.3 Compensation taken in advance (unless with written consent of residuary beneficiaries, amount is reasonable, and benefits the estate)

Rule 10.131

1.6 Representatives and attorneys may not avoid the statutory restrictions by separately agreeing with the heirs and beneficiaries for their compensation. Such agreements are not binding on the Court and, to the extent they purport to authorize compensation higher than allowed by statute, they are void.

Probate Code sections 10803, 10813

See also *Estate of Baum*, 209 CA3d 744, 257 CR 566 (1989)

2. Compensable From Individuals, Not Estate

2.1 Representing Personal Representative Individually

2.1.1 Unsuccessful applicant for Letters or action brought for the benefit of the representative against the interests of other estate beneficiaries - no showing of benefit to estate, only to individuals.

Estate of Bloom, 107 CA3d 195, 165 CR 591 (1980)

Estate of Morinini, 252 CA2d 805, 60 CR 813 (1967)

Estate of Simmons, 43 C 543, 1 CU 682 (1872)

2.2 Services for Individual Beneficiaries Not Benefiting Entire Estate

2.2.1 Remainder beneficiary of testamentary trust denied compensation for services of his attorney in responding to trustee's petition for order determining if such beneficiary entitled to a trust share.

In re Myers' Estate, 230 CA2d 465, 41 CR 151 (1964)

2.2.2 Attorney denied compensation for representing executor who participated actively in a proceeding to ascertain and determine succession to the estate.

In re Poisl's Estate, 153 CA2d 661, 315 P2d 98 (1957)

(Result might differ if direct benefit to estate shown; see *Estate of Feldman*, infra Sec. 9.8.1b)

2.2.3 Attorney denied compensation in representing co-executrix who claimed an asset against the estate.

In re Elftman's Estate, 160 CA2d 10, 324 P2d 1977 (1958)

2.2.4 Attorney denied compensation in successfully representing income beneficiaries to detriment of remainder trust beneficiaries.

In re Bullock's Estate, 133 CA2d 542, 284 P2d 960 (1955)

PART B, ORDINARY ATTORNEY SERVICES COMPENSATED BY STATUTORY COMPENSATION

3. Right To Compensation Is "Absolute"

3.1 Statutory Compensation for Ordinary Services is Absolute Right. Probate Code sections 10810 et seq.

Estate of Johnston, 47 C2d 265, 303 P2d 1 (1956)

Estate of Getty, 143 CA3d 455, 191 CR 897 (1983)

But right is subject to Prob C Section 12205

(see Paragraph 7.2 below)

3.2 Statutory Compensation Does Not Violate Federal Antitrust Laws

Estate of Effron, 117 CA3d 915, 173 CR 93 (1981)

3.3 Probate counsel may not be surcharged for damages due to negligence or misconduct for which the representative is held exclusively accountable to the estate (surcharge would be against the executor or administrator personally).

Estate of Lagios, 118 CA3d 459, 173 CR 506 (1981)

Goldberg v. Frye, 217 CA3d 1258, 266 CR 483 (1990)

3.4 Compensation is payable from state, not personally by personal representative

Estate of Lee, 124 CA3d 687, 177 CR 220 (1981)

3.4.1 If possible illiquidity of estate, a reserve may be created for payment of compensation, including advances by beneficiaries, to be paid to attorney upon later court order.

3.4.2 Creation of such a reserve should be disclosed to court in compensation petition.

4. Services Compensable by Statutory Compensation

Definition: "Ordinary Services" (Probate Code section 10810)

4.1 Meeting with client to review will and related documents; discuss Petition for Probate, assets, heirs, notices, etc.

4.2 Petition for Special Letters of Administration, if ex parte (if contested, extraordinary compensation to attorney for appointed special administrator, if beneficial to estate)

4.3 Preparation of Petition for Probate and other papers to appoint personal representative, including locating will and heirs/beneficiaries

4.4 Order publication and mailing of Notice of Death

4.5 Preparation and service of Notice of Death if:

4.5.1 Additional beneficiaries discovered and supplement must be filed

4.5.2 Counties other than Los Angeles where legal newspaper does not handle mailing

4.6 Preparation of supplements or declarations required

4.7 Separate Petition for Authority under The Independent Administration of Estates Act

4.8 Petition for Appointment of Successor Representative; order for limited republication

4.9 Preparation of Inventory/Inventories

4.10 Incidental expenses, including local telephone calls, postage, and secretarial services (but compare with Paragraphs 11.2 and 11.3 below)

4.11 Handling debts and claims, including acceptance, rejection and payment (unless disputes arise, necessitating compromise or litigation)

4.12 Family allowance

4.13 Status report (Probate Code Section 12200), unless multiple reports

4.14 Account and report current

4.15 First Petition for Preliminary Distribution with or without bond

Probate Code Sections 11620-11623

If multiple reports, see also Paragraph 8.4 below and Prob C Section 11624 re possible extraordinary compensation

4.16 Petition for Compensation (but see *Estate of Trynin*, cited in Paragraph 9.9 below)

4.17 Final Report or Account and Petition for Compensation, Extraordinary Compensation, and Distribution

4.18 Supervising distribution and discharge

4.19 Preparation of required notices

4.20 Preparation of required attorney orders

5. Computation Of Statutory Compensation Base—Amount of Estate Accounted For

Definition:

"Value of the estate accounted for", as defined in Probate Code section 10800, includes:

"the total amount of the appraisal value of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property."

This formula applies whether or not a sale has taken place during the probate of the estate.

5.1 Inventory and Appraisal (Without Reference to Encumbrances or Other Obligations), Including:

5.1.1 Full value of property subject to homestead declared during decedent's life

5.1.2 Gross value of stock in brokerage margin account

(Earlier case of *Estate of Wittenberg*, 202 CA2d 867, 21 CR 258 (1962) not controlling since 1965 amendment to Probate Code section 10800 re obligations on property.)

5.1.3 Assets received from distribution of another estate

Estate of Davis, 8 CA 355, 97 P 86 (1908)

5.1.4 Based on original appraised value (not reappraisal)

5.2 Plus Receipts of Income During Administration

5.2.1 Ordinary interest and dividends

5.2.2 Gross or net income

5.2.2a Only net income from operation of business during administration (but operation of business may entitle attorney and representative to extraordinary compensation)

5.2.2b Treatment of rental property, ordinary rental (gross) vs. business (net)

Estate of Raphael 128 CA2d 92, 274 P2d 880 (1954)

Estate of Reinhertz 82 CA2d 156, 185 P2d 858 (1947)

In Los Angeles County, rental of 3 or more units is considered a business.

5.2.2c If accounting is waived, receipts, gains, and losses can be included in compensation calculation if schedules to substantiate are attached.

5.3 Plus Gross Gains on Sales (based on original appraised value, not reappraisal)

5.4 Less Gross Losses on Sales (based on original appraised value, not reappraisal)

5.5 Treatment of Losses During Administration

5.5.1 Casualty loss - insurance proceeds are includible, but not in addition to the value of the property before the loss

Firebaugh v. Burbank, 121 C 186, 53 P 560 (1898)

5.5.2 As a result of litigation - property not included (but litigation may entitle attorney to extraordinary compensation)

Estate of Delaney, 110 C 563, 42 P 981 (1895)

5.5.3 Foreclosure - only loss of equity in property is deducted

Estate of Stein, 267 CA2d 631, 73 CR 324 (1968)

5.6 Assets Not Included in Compensation Base

5.6.1 Joint tenancy assets

Estate of Fritz, 140 CA 487, 35 P2d 643 (1934)

5.6.2 Community and quasi-community property assets

5.6.2a Passing outright to the surviving spouse (with or without proceeding under Probate Code section 13650)

5.6.2b Where no election to administer under Probate Code section 13502 has been filed

5.6.3 Other property not in the representative's possession

5.6.3a Assets held by the decedent subject to trust

Henderson v. Fisher, 260 CA2d 218, 66 CR 896 (1968)

However, if constructive trust imposed to enforce promise to make a will, then treated in same manner as a testamentary trust and assets are included.

Ludwicki v. Guerin, 57 C2d 127, 132; 17 CR 823 (1961)

Estate of Turino, 8 CA3d 642, 646; 87 CR 581 (1970)

5.6.3b Property located outside California, unless it comes into possession of personal representative as when real property is sold and proceeds are distributed to the representative

Estate of Johnston, 47 C2d 265, 303 P2d 1 (1956)

Estate of Hendrix, 77 CA2d 647, 176 P2d 398 (1947)

Court may inquire into necessity for bringing asset into California, or whether distribution could have been made through ancillary proceedings.

5.6.4 Unrealized gain or loss

5.6.5 Decedent's pro-rata share of partnership assets, (unless actually received by representative in settlement of decedent's interest in partnership). However, inventory value of decedent's partnership interest is included.

Estate of Grivel, 10 C2d 454, 74 P2d 759 (1937)

Estate of Lux, 100 C 609, 35 P 395 (1893)

5.6.6 Stock splits after death

5.6.7 Insurance or other contractual payments to a named beneficiary other than estate

6. Apportionment

6.1 General Rule: One Statutory Compensation Per Estate

Estate of Morgan, 94 CA 617, 271 P. 762 (1928)

Probate Code sections 10800, 10810

6.1.1 One statutory compensation for representative(s)

6.1.2 One statutory compensation for attorney(s)

6.2 Court has equitable power notwithstanding statute to apportion statutory compensation between multiple, successive, and concurrent attorneys.

Estate of Reade, 31 C2d 669, 672; 191 P2d 745, 746 (1948), as cited in *Hutchinson v. Gertsch*, 97 CA3d 605, 159 CR 40 (1979)

6.3 Basis: Work Performed

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by each.

Estate of Downing, 134 CA3d 256, 184 CR 511 (1982)

6.4 Multiple Representatives

6.4.1 Example: two representatives, one attorney

6.4.1a Attorney only entitled to one statutory compensation

6.4.1b Representatives apportion statutory compensation per agreement

6.4.2 Example: two representatives, two attorneys (each represents one of the representatives)

Ordinary compensation cannot exceed total compensation had the two representatives been represented by one attorney

(See sample forms of allegations in PART E, Secs. 11.2 and 11.3.)

6.5 One Representative With Successive Attorneys

6.5.1 In the absence of any evidence or agreement, the Court may divide the compensation equally.

See *Ford v. Freeman*, 40 CA 221, 180 P 545 (1919)

Cf. *Estate of Gonzales*, 93 CA2d 440, 209 P2d 21 (1949)

6.5.2 Written agreement between attorneys

6.5.3 Request by either attorney, showing proposed apportionment, with notice and copy of petition to other attorney; nonappearance by other attorney after notice may be construed by the Court as a waiver.

6.5.4 Written waiver of share

6.5.5 Consent to proposed apportionment

6.6 Court's Resolution

6.6.1 General rule: Look to statute and cases for formula on allocating the compensation between counsel

6.6.2 Review services rendered when both attorneys request allocation

6.6.3 Award ordinary compensation on basis of services actually performed and other elements used in determining extraordinary compensation

6.6.4 Allocate award in an equitable manner

7. Special Circumstances

7.1 Attorney Acts as Personal Representative

No double compensation absent court order:

7.1.1 Notwithstanding any provisions in will, compensation for services as estate attorney not allowed unless right to such compensation is approved by court in advance pursuant to Probate Code section 10804. Generally compensation as representative only (See *Estate of Parker*, 200 C 132, 251, P.907 (1926) and *Estate of Hart*, 205 CA2d 631, 22 CR 462 (1962).). (Representative can't waive commissions and be paid as attorney.)

7.1.1a Exception: If representative enters into express agreement not to participate in law firm's profits from the compensation, law firm may receive attorney's compensation.

(*Estate of Parker*), supra

In re Anderson's Estate, 166 CA2d 39, 332 P2d 785 (1959) (Agreement was not required because representative wasn't partner with attorneys, although there was some association.)

7.2 Reduction Under Probate Code section 12205

7.2.1 Applies to reduce statutory compensation if:

7.2.1a Estate of person dying after December 31, 1976;

7.2.1b Administration takes more than 12 months from issuance of Letters (18 months if federal estate tax return is required);

7.2.1c Delay caused by factors within the control of the attorney; and

7.2.1d Delay not in the best interests of the estate

7.2.2 If no report filed with court within time period (with notice and copy of petition to all interested persons), stating either that delay was beyond control or in best interests of the estate, this fact may be considered by the court in determining whether to reduce the compensation.

7.2.3 If delay due to representative and not attorney, it is outside control of attorney

7.2.4 If attorney is negligent, compensation should be reduced. Amount of reduction in Court's discretion

7.2.5 Court must consider any previous action under Probate Code section 12202

7.3 Allowances on Account - See LASCR, rule 10.132

7.3.1 In proportion to work performed and described in petition, also showing work still to be performed

See LASCR, rule 10.132.

7.3.2 Maximum: 70% of statutory compensation until final account/report settled

See LASCR, rule 10.132.

7.3.3 Allowed only in conjunction with a preliminary distribution, unless special circumstances

See LASCR, rule 10.132.

7.3.4 If apportionment necessary, usually not allowed until final account

See LASCR, rule 10.134.

7.4 Compensation Set by Will

7.4.1 Will governs compensation unless court makes order granting relief from will's provisions

Probate Code sections 10802, 10812

7.4.2 Statute controls in case of dual role

See Paragraph 7.1.1 above

7.5 Lien for Compensation, Upon Court Order

PART C, EXTRAORDINARY ATTORNEY SERVICES COMPENSATED BY EXTRAORDINARY COMPENSATION

8. California Probate Code

8.1 Probate Code sections 10801, 10811 - Allowance of additional compensation for "extraordinary services… in an amount the court determines is just and reasonable."

8.1.1 Sales or mortgages of real or personal property

8.1.2 Contested or litigated claims against the estate

8.1.3 The defense of a will contested after its admission to probate

In a post-probate contest, the estate may be required to pay the cost of defense even if the defense is not successful, i.e., Section 10801 expenses and Section 10811 expenses can be awarded against and made payable from the estate so long as the representative's defense was in good faith.

8.1.4 The successful defense of a will contested before its admission to probate

Although expenses in preprobate contests require a "successful defense", the term is construed broadly. It matters not whether the "success" was by judgment after trial or by pretrial settlement, or whether the representative fails to "win" on all issues. So long as the defense BENEFITED the estate — in the sense of preserving decedent's desires and intentions as expressed in the will — it is "successful".

See *Estate of Schuster*, 163 CA3d 337, 209 CR 289 (1984) — compensation payable by estate where contest settled by dismissal with prejudice; immaterial that estate did not prevail on challenge to contestant's standing.

8.1.5 Preparation of estate, inheritance, income, sales or other tax returns or the adjustment, litigation, or payment of any of said taxes

8.1.6 Litigation involving estate property

8.1.7 Carrying on of the decedent's business pursuant to court order

If not pursuant to Court order, there is no "guarantee" that extraordinary compensation will be approved; the result will likely turn on the circumstances involved and whether continuing the business was profitable to the estate.

Estate of Scherer, 58 CA2d 133, 136 P2d 103 (1943)

Estate of King, 19 C2d 354, 121 P2d 716 (1943)

8.1.8 "Other litigation or special services that are necessary for the executor or administrator to prosecute, defend or perform."

8.2 Probate Code section 8547 - Allowance of compensation to an attorney out of estate funds for extraordinary services to a special administrator

8.3 Probate Code section 10953 - Allowance of compensation for the extraordinary service of filing an accounting for the administration of a deceased, incompetent or absconding representative by his attorney, or the attorney of record for the estate, when such an accounting is required

8.4 Probate Code section 11003 - Recovery of compensation and expenses for "bad faith" contest or opposition to contest

8.4.1 If the court determines that a contest to the representative's account was brought "without reasonable cause and in bad faith", the court may award against the contestant the compensation, and costs of the personal representative, as well as other expenses and costs of litigation, including attorney compensation, incurred to defend the account. The amount so awarded is a

charge against the contestant's interest in the estate, and the contestant is personally liable for any amount remaining unsatisfied. (Emphasis added)

8.4.2 Conversely, upon determining that the representative's opposition to a contest was "without reasonable cause and in bad faith", the court may award the contestant the costs and other expenses, including attorney compensation, incurred to contest the account. The award is a charge against the compensation or other interest of the personal representative in the estate, and the representative is personally liable and on the bond (if any) for any amount that remains unsatisfied. (Emphasis added)

8.5 Probate Code section 11624 - Costs of preliminary distribution paid by distributee or estate in proportions determined by Court

8.6 Paralegal Services. The above sections (except sections 11003 and 11624) provide that extraordinary compensation for probate counsel may also include compensation for extraordinary services performed by the attorney's paralegal under the direction and supervision of the attorney. The application for such compensation must set forth the "hours spent and services performed by the paralegal."

8.6.1 It is doubtful that the Legislature intended to equate "legal secretary" work with work performed by a "paralegal" (the Legislature expressly chose the term "paralegal" rather than "legal secretary.") Thus, to justify payment for paralegal services, counsel should set forth in detail, the paralegal's experience and credentials.

See Rule 10.140.

Probate Code sections 10811, 8547(d), and 10953(d).

8.6.2 The amount requested for the extraordinary services of the attorney and paralegal combined must not exceed the amount that would be appropriate if the attorney had provided the services without paralegal assistance.

9. Case Authority

9.1 General Considerations

9.1.1 Propriety of allowance - "just and reasonable" considerations. The court has broad discretion in determining whether and what amount of extraordinary compensation should be allowed. Generally, the court takes into account the value of the estate, the nature and difficulty of the tasks performed and the time spent, the results achieved and whether those results benefited the estate as a whole (rather than simply furthering the interests of a particular distributee). The court will also evaluate these factors against the amount of statutory (ordinary) compensation payable, and the extent to which the amount of statutory compensation itself provides reasonable compensation.

Estate of Fulton, 23 CA2d 563, 73 P2d 664 (1937)

Estate of Harvey, 103 CA2d 192, 229 P2d 68 (1951)

See Rule 10.142.

9.2 Need for Substantiation

9.2.1 *Estate of Fulcher*, 234 CA2d 710, 44 CR 861 (1965)

Reversed probate court's allowance of extraordinary compensation on the grounds that the petition for such compensation was "completely lacking in particularity sufficient to inform as to the nature of the services performed." The court found insufficient the attorneys' statement that "they had reasonably expended approximately 400 hours of their time on legal matters concerning the estate which was… of a nature to qualify said services as extraordinary," since such statement failed to disclose the time involved in performing each individual item of service and was therefore "insufficient as the basis for determination by the trial court of the amount to be awarded".

9.2.2 *Estate of Lundell*, 95 CA2d 352, 212 P2d 914 (1949)

Award of extraordinary attorneys' compensation reversed where the court found that the evidence demonstrating that the necessity for, or nature of, the extraordinary services claimed to have been performed was inadequate. Further, the attorney failed to provide any detailed statement of precisely what extraordinary services had been rendered.

9.3 Sales or Mortgages of Real or Personal Property

9.3.1 Compensation Allowed

9.3.1a *Estate of Frayshe*r, 47 C2d 131, 301 P2d 848 (1956) Allowance of extraordinary attorneys' compensation for commencement of proceedings for sale of real property.

9.3.1b *Estate of Raphael*, 128 CA2d 92, 274 P2d 880 (1954)

Allowance of extraordinary compensation to attorneys for services in connection with sale of stock to comply with court order for such sale to discharge attorneys' lien on share of distributee.

9.3.1c *Estate of McSweeney*, 123 CA2d 787, 268 P2d 80 (1954)

No abuse of discretion in allowing attorneys' compensation for extraordinary services in selling three parcels of real property even though "the amount of extra work.... was not impressive".

9.3.2 Compensation Denied

Estate of Coberly, 90 CA2d 46, 202 P2d 306 (1949). Where attorney for estate rendered services in negotiating sale of promissory note, an asset of the estate, to another and himself as trustees, the probate court did not abuse its discretion in refusing extraordinary compensation for selling note even though attorney took title as trustee.

9.4 Contested or Litigated Claims Against the Estate

9.4.1 *Estate of Walden*, 174 C 776, 164 P 639 (1917); *Estate of Bullock*, 133 CA2d 542, 284 P2d 960 (1955). Extraordinary compensation denied for litigation commenced between persons claiming a share in the estate to determine their own shares.

9.4.2 *Estate of Stuttmeister*, 75 C 346, 17 P 223 (1888). Extraordinary compensation denied where litigation made necessary by the improper acts of the personal representative.

9.5 Preparation of Certain Tax Returns or the Adjustment, Litigation, or Payment of any of said Taxes

9.5.1 Compensation Allowed

Estate of Bray, 230 CA2d 136, 40 CR 750 (1964). No abuse of discretion nor error in probate Court's order allowing both attorney's and accountant's extraordinary compensation for the same tax services where each rendered extraordinary services and was entitled to compensation, the amount of which was discretionary with the Court.

9.5.2 Compensation Denied

Estate of Walker, 221 CA2d 792, 34 CR 832 (1963). Upheld trial Court's dispensation of the case, finding that the language of Probate Code Section 902 was clear, that the allowance for extraordinary services rendered (including the preparation and filing of federal estate tax return) was discretionary with the probate court, and that it was not mandatory upon the lower court to award extraordinary compensation where extraordinary services were performed. The court may take size of estate (and therefore the amount of statutory compensation) into account in exercising its discretion with respect to extraordinary compensation.

(See also *Estate of Fulcher*, 234 CA2d 710, 44 CR 861 (1965), discussed in Section 9.2.1 above.)

9.6 Litigation in Regard to the Property of the Estate

9.6.1 Compensation Allowed

9.6.1a *Estate of Blair*, 127 CA2d 130, 273 P2d 349 (1954) Award of compensation for extraordinary services was not an abuse of discretion where extraordinary services were rendered in preparing for the defense of an eminent domain proceeding, which did not go to trial but was eventually settled through lengthy negotiations. Compare *Estate of Baum*, (supra, Sec. 1.6)

9.6.1b *Estate of Keith*, 16 CA2d 67, 60 P2d 171 (1936) Extraordinary compensation awarded for attorney involvement in three disputes regarding estate assets: the settlement of a creditor's claim, the disposition of an oil lease, and collection of funds due the estate. The court held that since the services consumed a great deal of time and required a court appearance, a number of conferences and extensive correspondence, the attorney's services were "extraordinary and beneficial."

9.6.1c *Estate of Turino*, 8 CA3d 642, 87 CR 581 (1970) Extraordinary compensation for litigation to defend the estate against imposition of a constructive trust on estate assets.

9.6.2 Compensation Denied

Estate of Tubbs, 82 CA2d 305, 186 P2d 7 (1947)

Extraordinary attorneys' compensation denied where the Court found the taking of a deposition unnecessary, particularly where the deposition was taken before probate proceedings commenced.

9.7 Carrying on of the Decedent's Business

9.7.1 *Estate of Scherer*, 58 CA2d 133, 136 P2d 103 (1943)

The failure to obtain prior court authorization to operate a business will not preclude the court from ratifying the executor's operation of a business, especially where such action was necessary to preserve the estate. Accordingly, extraordinary compensation for the executor (and presumably extraordinary compensation for the attorney) can be obtained under such circumstances.

9.7.2 *Estate of King*, 19 C2d 354, 121 P2d 716 (1942)

Extraordinary compensation awarded for carrying on a decedent's business where the will created the power in the executor to do so, or if necessary to preserve the estate. However, where there is no prior court order, extraordinary compensation may be denied unless the business has been profitable to the estate. Same rules should apply to extraordinary compensation for the executor's attorney.

9.7.3 *Estate of Allen*, 42 CA2d 346, 108 P2d 973 (1941)

The unsuccessful operation of a business is not determinative as to the award of representative's compensation, especially where a good faith effort is shown. Generally compensation should be based upon the amount of extra work required. Same considerations should apply for extraordinary attorney's compensation.

9.7.4 Note: Although the cases do not enumerate specific services that would entitle an attorney to extraordinary compensation, it would appear that absent authorization in a will for the personal representative to carry on the business and absent a court order granting prior authority to do so, compensation may be denied in the event the operation of a business turns out to be unsuccessful or not in the best interests of the estate. It would also appear that the reasonable value of extraordinary services would be based, inter alia, upon the amount of time necessarily expended, as well as partially upon the results of the operation of the business.

9.8 Such Other Litigation or Special Services as may be Necessary for the Executor or Administrator to Prosecute, Defend, or Perform

9.8.1 Compensation Allowed

9.8.1a Will Contest (see also Secs. 8.1.3 and 8.1.4 above) *Estate of Dunton*, 15 CA2d 729, 60 P2d 159 (1936) Compensation was awarded in the successful defense of a will contest after the will had been duly admitted to probate. The court found that it was the duty of the executor to defend the will and, accordingly, he was entitled to retain counsel to do so. It should be noted that the court stressed the importance of an itemized account of those services rendered so that the nature of the services could be readily ascertained.

Estate of Stokely, 108 CA3d 461, 166 CR 587 (1980) Litigation was necessary for the defense of an attack on a codicil.

9.8.1b Construction or Interpretation of Will

Estate of Halsell, 138 CA2d 680, 292 P2d 300 (1966) Extraordinary compensation awarded to administrator's attorneys involved in litigation over the construction of a will. The court held that the administrator/beneficiary, in his representative capacity, had the duty to represent the estate, and that a determination of interests in estate was a benefit to the estate regardless of the outcome, such that the litigation performed by the attorneys was properly considered extraordinary.

Estate of Feldman, 78 CA2d 778, 178 P2d 498 (1947) Extraordinary compensation awarded for obtaining an order for interpretation of a complicated will.

9.8.1c Defense of Executor's Account

Estate of Beirach, 240 CA2d 864, 50 CR 5 (1966) Extraordinary attorneys' compensation awarded for defense of the executor's first account, which services included trial preparation, seven days actually spent in trial, and time spent with respect to an appeal.

Estate of Raphael, 128 CA2d 92, 274 P2d 880 (1954) Defense of the personal representative's account entitled attorneys to extraordinary compensation. However, other legal services deemed to have been rendered to the administrator in his individual capacity, and not in his capacity as personal representative, were chargeable directly to the individual and were not to be paid out of estate funds.

Estate of Beach, 15 C3d 623, 125 CR 570 (1975) Extraordinary compensation allowed for services in defense of an executor's account.

See also Paragraph 8.4 above.

9.8.1d Borrow Money

Estate of O'Connor, 200 C 646, 254 P 269 (1927) Extraordinary compensation awarded for services rendered in securing a loan to pay debts of the estate.

9.8.1e Extraordinary Efforts to Locate Estate Assets

Estate of LaMotta, 7 CA3d 960, 964, 86 CR 880, 882 (dictum) (1970) Extraordinary compensation awarded for extraordinary efforts to locate estate assets.

9.8.1f Heirship Proceedings

Hutchinson v. Gertsch, 97 CA3d 605, 614, 159 CR 40, 45 (1979) Extraordinary attorneys' compensation allowed for services rendered to decedent's widow as sole heir of the estate before she was appointed as administrator-with-will-annexed. The Court held that under "special circumstances," attorneys' compensation may be allowed against a person other than the person who employed the attorney. One of those special circumstances is the situation in which a fund is preserved or increased to the benefit of that person (the "common fund" theory.) See also, e.g., *Copley v. Copley*, 126 CA3d 248, 293; 178 CR 842, 870 (1981); and *Estate of Gump*, 128 CA3d 111, 180 CR 219 (1982).

Estate of Harvey, 103 CA2d 192, 229 P2d 68 (1951) Extraordinary compensation awarded in heirship proceedings brought by the personal representative.

Caveat: Personal representative has no duty to defend against such a petition, and, in doing so, may violate his duty to treat all beneficiaries without favoritism.

9.8.2 Compensation Denied For Lack of Showing Benefit to Estate

9.8.2a *Estate of Coberly*, 90 CA2d 46, 202 P2d 306 (1949) No extraordinary compensation was awarded where mistake of executrix necessitated the filing of a supplementary inventory and a second final account.

9.8.2b *Estate of Tubbs*, 82 CA2d 305, 186 P2d 7 (1947) No extraordinary compensation allowed where a casual examination of a digest was all that was required to determine whether a promissory note was barred by the statute of limitations. Also, services were rendered prior to the initiation of probate proceedings.

9.8.2c *Estate of Roscelli*, 245 CA2d 188, 53 CR 866, 869 (1966)

Burden was on the attorney to show attorney's intervention effected reduction of a claim against estate.

9.9 Defense of Request for Extraordinary Compensation

9.9.1 In an appropriate case, extraordinary attorney compensation may even be allowed for probate counsel compensation incurred in establishing and defending a request for extraordinary compensation (e.g., compensation incurred in defending against the representative's attack on a compensation request related to estate litigation.) A contrary rule would be deleterious to decedents' estates and heirs because "attorneys would be reluctant to perform services necessary to the proper administration of decedents' estates if the compensation awarded for their services could be effectively diluted or dissipated by the expense of defending against unjustified objections to their compensation claims."

Estate of Trynin, 49 C3d 868, 871; 264 CR 93, 94 (1989)

9.9.2 But recovery of "fee-related compensation" is not "invariably required" and need not be awarded if the court determines that prior compensation awards are adequate compensation under the circumstances.

Estate of Trynin, supra, 49 C3d at 879, 264 CR at 100

PART D, COSTS

10. Attorney Incurred Costs, Reimbursed or Absorbed in Compensation

10.1 Reimbursed

10.1.1 Court clerk's fees

10.1.2 Newspaper publication fees

10.1.3 Surety bond premiums

10.1.4 Appraisal fees

10.1.5 Prior Court permission for payment of above costs not necessary; in fact, must be paid before final distribution

See Rule 10.108.

10.2 Absorbed as Part of Statutory Compensation

10.2.1 Photocopies and postage

See Rule 10.109.

10.2.2 Secretarial and word processing time

10.2.3 Paralegal time for ordinary services

See Rule 10.140.

10.2.4 Computer time for ordinary services

10.2.5 Local telephone calls

See Rule 10.109.

10.2.6 Local travel, mileage, and parking

See Rule 10.109.

10.3 Reimbursed Only in Court's Discretion, Depending on Circumstances Disclosed

10.3.1 Substitutes for U.S. Postal Service (air courier, United Parcel Service, local messenger services)

10.3.2 Long distance telephone

10.3.3 Long distance travel

10.3.4 Extraordinary postage and copying (e.g., over 10 beneficiaries)

10.4 If attorney's compensation waived (as when attorney is also representative), show details of costs in first accounting covering period of disbursement.

10.5 Obtain prior court permission if amounts are unusually large

10.6 Legal authorities re reimbursement for costs:

10.6.1 Prob C Sections 1002 and 11004 and annotations

10.6.2 Rule 10.109.

10.6.3 *Summary of California Law, Wills and Probate*, 12 Witkin, (Ninth Edition 1990), Sec. 499

PART E, FORMS

11.1 Form: Agreement re Performance of and Compensation for Duties of Executor(s) (See Section 1.1.3b)

[Title of Court]

	)	No. BP
Estate of	)	
JOHN DOE	)	AGREEMENT RE PERFORMANCE OF AND COMPENSATION FOR DUTIES OF EXECUTOR
	))	
	)	
Deceased.	)	

1. MARIA DOE is the Executor of the will of JOHN DOE, deceased.

2. MARY ROE is the Attorney for MARIA DOE as said Executor.

3. The Executor lives outside the State of California, and finds it difficult to perform some of her duties as Executor, including collecting the decedent's bank accounts and other assets, depositing income checks, preparing checks to pay debts and administration expenses, maintaining books for court accounting and income tax purposes, preparing accountings, etc.

4. The Executor desires that her attorney, MARY ROE, and her attorney's staff, perform these duties for the Executor.

5. To compensate her attorney, the Executor will, from her own funds, pay Attorney MARY ROE when billed, at the hourly rate for the person performing the services disclosed on the bills.

6. To compensate herself for this expense, the Executor is entitled to statutory commissions as approved by the Court in this matter.

7. The Executor has been advised to consult with another attorney before signing this agreement.

Dated:

MARIA DOE,

Executor of the will of JOHN DOE

MARY ROE, Attorney for Executor

11.2 Form: Allegation in Petition for Statutory Attorney Compensation When There Are Co-Executors, Each Represented by Separate Counsel (See Section 6.4)

MARY ROE, A Professional Corporation, and JOHN SMITH, A Professional Corporation, attorneys for the co-executors, have rendered ordinary legal services to the petitioners, and are entitled to statutory fees in the combined sum of $X,XXX.XX. A statement of the computation of the statutory fee, based upon the amount of the estate accounted for, is attached hereto, marked EXHIBIT H, and made a part hereof.

Said attorneys have agreed that the following is a reasonable and just allocation of the statutory fees for their representation of their respective clients in this proceeding:

MARY ROE, A Professional Corporation, should receive the sum of $X,XXX.XX for its representation of MARIA DOE;

JOHN SMITH, A Professional Corporation, should receive the sum of $X,XXX.XX for its representation of BILL HENRY.

By their signatures to this petition, MARY ROE, A Professional Corporation, by MARY ROE, and JOHN SMITH, A Professional Corporation, by JOHN SMITH, confirm their agreement to the allocation of the statutory fees.

[SIGNATURES]

11.3 Form: Allegation When Prior Attorney and Successor Attorney Cannot Agree as to Allocation of Statutory Compensation (See Section 6.5.3)

In its order of February 3, 1984, this Honorable Court authorized your Petitioner, the executor herein, to reserve the right to petition the Court for statutory and extraordinary executor's commissions and attorney's fees when said executor filed her final account and report of administration. A statement of the computation of the statutory commissions and attorney fees, based upon the amount of the estate accounted for, is attached hereto as EXHIBIT F and made a part hereof.

Petitioner is entitled to statutory commissions for ordinary services rendered herein as executor in the sum of $6,807.99. Petitioner has received no payment on account for said ordinary services.

MARY ROE, A Professional Corporation, attorney for petitioner, has rendered ordinary services to petitioner, and is entitled to a share of not less than $5,537.99 of the statutory attorney fees. JOE SMITH, former counsel for the executor, is entitled to a share of not more than $1,270.00 of the statutory attorney fees. Neither of the attorneys for the estate has received any payment on account of statutory fees for the ordinary services they have rendered as attorneys for the estate; Petitioner therefore requests that this Court authorize her to pay the statutory attorney fee as allocated in this paragraph.

11.4 Form: Allegation When Extraordinary Attorney Services Has Been Performed by Separate Counsel for Each Co-Executor

MARY ROE, A Professional Corporation, attorney for petitioner MARIE DOE, and JOHN SMITH, a Professional Corporation, attorney for petitioner BILL HENRY, have rendered extraordinary services to the estate which are described in EXHIBITS I and J attached hereto and made a part of this petition. The value of said services is $X,XXX, and is reasonable in light of the complexities of the estate, the tax savings to the estate, the increase in distribution to the beneficiaries of the estate, and the special circumstances, all as described in EXHIBITS I and J.

Extensive hours were incurred, in excess of the amount requested as extraordinary attorneys fees, to resolve the numerous problems concerning the estate and the probate of the "lost will" and the subsequent will proffered for probate by petitioner BILL HENRY.

The services performed by the above two professional corporations did not duplicate services to the petitioners. The following allocation of the $X,XXX fee requested is proposed:

MARY ROE, A Professional Corporation,

Attorneys for petitioner MARIA DOE $X,XXX

JOHN SMITH, a Professional Corporation,

Attorneys for petitioner BILL HENRY $X,XXX

11.5 Form: Format for Petition for Extraordinary Attorney Compensation

ESTATE OF JOHN DOE

EXHIBIT—EXTRAORDINARY SERVICES OF ATTORNEYS

Federal Estate Tax Return (Form 706)

The value of the gross estate was $945,000. The assets consisted of 3 pieces of real property, 60 issues of stock, 17 bonds, 32 pieces of precious jewelry, and a stamp collection, and were valued as of the date of death and also the alternate valuation date. The attorneys' paralegal expended time in gathering the information for such valuations, including review of stock market reports, discussions with persons in the jewelry and stamp collection business, etc. The paralegal encountered special difficulties because many corporations were no longer active, so that information had to be sought from the states of incorporation as to their continued existence.

The attorney determined that valuing the property as of the alternate valuation that resulted in a considerable tax savings to the estate. After final preparation of the Form 706, and after discussing it with petitioners, the attorneys filed the return with the IRS. The return was accepted as filed, without audit.

	Hours	Rate	Amount	Total
Attorney time		xx	$xxx	$x,xxx
Paralegal time		xx	xx	x,xxx

Total				$x,xxx

Fiduciary Income Tax Returns (Forms 1041 and 541)

Petitioner's attorneys prepared the fiduciary returns for 1984, and filed them after petitioners reviewed and signed them.

	Hours	Rate	Amount	Total
Attorney time	x	xx	$xxx	
Total				$x,xxx

Sale of Real Property

The decedent owned an undivided one-half interest in 3 different pieces of real property. It was necessary to sell one of the parcels in order to pay costs of administration and to provide funds for a family allowance for decedent's minor children by a prior marriage.

An analysis was made to determine which property it would be most advantageous to sell. Since a portion of the estate was separate property, consideration had to be given to the needs and desires of the spouse. It was decided that the commercial property would be sold.

Petitioners' attorneys interviewed a broker for the sale, and reviewed 4 different offers. An offer was accepted, and petitioners' attorneys prepared and filed all the necessary documentation, appeared in Court at the confirmation hearing, and handled the escrow.

	Hours	Rate	Amount	Total
Attorney time	xx	$xxx	$x,xxx	
Total				$x,xxx

Litigated Claims Against the Estate

A creditor's claim was filed by decedent's brother in the sum of $150,000, alleging a promissory note. After extensive investigation of decedent's records and interview of witnesses, it was determined that there was sufficient evidence decedent had repaid this amount. The claim was rejected, and the claimant filed suit against the estate.

The attorneys for petitioners filed a petition with the Court for authority to hire outside counsel to defend the estate, which was granted.

	Hours	Rate	Amount	Total
Attorney time to date	xx	$xx	$x,xxx	
Total				$x,xxx

Summary

Service	Amount
Tax Work	
Form 706	$x,xxx
Form 1041	xxx
Sale of Real Property	x,xxx
Litigated Claims Against the Estate	x,xxx
TOTAL ATTORNEY FEE REQUESTED FOR EXTRAORDINARY SERVICES	$x,xxx

APPENDIX D

REQUESTING COMPENSATION FOR THE PROFESSIONAL CONSERVATOR

Reasonable compensation for services rendered by the professional conservator are an expense of administration of a conservatorship. After an inventory and appraisement has been filed, but not before the expiration of ninety days from the issuance of letters, the conservator of the estate or of the person may petition for his or her compensation. (Probate Code sections 2640, 2641.) The court is allowed to authorize periodic payments of compensation to a conservator, but in making such an order is to take into account the services to be rendered on a periodic basis and their reasonable value. (Probate Code section 2643(c).) These periodic payments are "on account" and subject to review by the court in light of the services actually rendered.

The conservator of the person and of the estate is entitled to a compensation which is based on what the court considers just and reasonable under the circumstances. (Probate Code section 2641.) Compensation is based on time spent, the nature of the services, and the value of those services to the conservatee.

The court's experience in evaluating the services and arriving at appropriate compensation has led to a preference for a grouping of services into categories and itemization within those categories. One suggested format follows. It is to be noted that the level of professional skill required varies depending on the service performed and, accordingly, the rate of compensation should also vary. For example, a conservator should not be paid at the same hourly rate for providing transportation or assisting in shopping as he or she would receive for managing property or investing estate assets.

The following format is not mandatory but it can also be used by non-professionals in requesting compensation. The format is not a substitute for narrative explanation.

STATEMENT OF SERVICES
CONSERVATIONSHIP OF

ACCOUNT PERIOD
From:
To:

PROBATE NO:

I. INVESTIGATION SERVICES HOURS
(Pre-Appointment)
Case Referral Review
Client Interview
Family/Collateral Interview
Evaluate Alternatives
Discovery of Estate Assets
Physician Consult; Re: Functioning and Medical Consent Capacity
Develop History, Social, Preferences for Personal Care Plan
Ascertain Urgency of Estate Needs, Develop Preliminary Estate Plan Complete Draft of Petition Report
Conference with Attorney; Re: Conservatorship, Need, Petitions… and Representation
Notifications of Referral Dispositions

TOTAL TIME _____

II. INTAKE SERVICES (30-60 Days) (Pre-Appointment)

Initial Visit
Placement
Medical Consent Matters
Develop Case Plan for Personal Services
Collateral/Telephone/Correspondence
Change Address
Notify Creditors
Cancel Credit Accounts
Letters/ Payee Change to Income Sources
Correspondence/Asset Discovery
Open Conservatorship Bank Accounts
Set up Security Brokerage Accounts
Cursory House Search
Complete House Search
Property Safeguard/Marshaling
Property Disposition

Discovery of Assets to be Inventoried
Case Plan Consultations

TOTAL TIME _____

III. PERSONAL SERVICES-CONSERVATORSHIP OF PERSON

Personal Visits
Placements
Medical Consent Matters
Family/collateral Contacts
Correspondence/Telephone Calls
Arrangements for Supplemental Social, Medical Companion Services
Conservatee/ Shopping/ Transportation
Ancillary Consults; Preparation of Case Plan -Forthcoming Year

TOTAL TIME _____

IV. ESTATE ADMINISTRATION SERVICES

Estate Finance Review
Analysis of Eligibility/Application for Benefits
Case Budget Preparation
Review Stock Holdings, Reports, Confer with Broker
Marshaling Assets
Determine Need for Personal Property Disposition
Sell Property - Personal
Store Property/Other Disposition
Correspondence/Telephone Calls
Review/Process Medical Bills/Claims
Employee Payroll, Taxes, Supervision
Review for Accounting/Termination
Conference with CPA, Taxes, Estate Planning

Select Investment, Reconcile Accounts
Establish Pre-Need Burial Arrangements

TOTAL TIME _____

V. BOOKKEEPING SERVICES

A. RECEIPTING OF FUNDS:

Identifying Incoming Checks/Cash as to reason for Payment and Deposit with Bank. Receipt for Funds into Estate Account.

_____ Transactions at 15 Minutes per Transaction

B. DISBURSING OF FUNDS:

Identifying Incoming Bills, Review to Ensure Legitimacy of Payments as Billed, and Issue Check for Payments

_____ Transactions at 15 Minutes per Transaction

TOTAL TIME _____

VI. PROPERTY MANAGEMENT

Real Estate Title Clearance
Obtain, Review, Preliminary Title Report
Legal Compliance, Government Ordinance, Health and Safety
Verify/Obtain Insurance

Property Rentals
Property Management
Repairs and Maintenance
Processing Unlawful Detainers
Real Property Marketing (Arrange Publication, Locate Broker, Discuss Marketing, Follow Listing)
Review/Negotiate Offers to Purchase Real Property
Enter Contract to Sell
Open/Complete/Close Escrow

TOTAL TIME _____

VII. LEGAL/COURT REQUIRED/STATUTORY SERVICES

Assist or Prepare Petitions for Appointment, Sales of Real Property, Substituted Judgments, Accounts
Prepare Confidential Supplemental Information Report to Petition for Appointment
Court Appearance Testimony
Obtain Medical Affidavits Arrange Transportation of Proposed Conservatee
Apply for Estate Bond and Letters
Prepare Inventory Forms 200 and 200A
Prepare Case Plan and Initial Status Report
Prepare Annual Status Report
Prepare/Assist Preparation of Accounting and Related Schedules
Prepare Answers to Probate Notes, Objections and Supplemental Reports
Conferences and Correspondence with Attorneys
Review Attorney Petitions

TOTAL TIME _____

VIII. CLOSING ESTATE VIA PROBATE §13000

Billing for Medicare & Secondary Medical Insurance
Termination of Vendor's Services
Obtaining all Due Refunds
Contacts with Sources of Income and Benefits
Review and Payment of Bills
Distribution of Assets to Heirs/Beneficiaries

TOTAL TIME _____

IX. CASE CLOSING

Transfer of Assets to Successor Fiduciary (Estimated)
Transfer of Assets to Former Conservatee (Estimated)
Notification of Death of Conservatee
Contacts with Mortuary, Family, Friends, Named Executor
Completion of Final Funeral/Mortuary Arrangements

TOTAL TIME _____

X. ADDITIONAL SERVICES

Professional Nursing Care
Custodial or Semi-Professional Care
Homemaker or Companion Care
Handyman or Repair Services
Transportation of Conservatee
Recreation/Socialization
Other (Please Specify)

TOTAL TIME _____

XI. REMARKS

TOTAL TIME FOR ALL SERVICES	$_ _ _ _ _
TOTAL FEE REQUESTED FOR SERVICES:	$_ _ _ _ _

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Madera County
Probate Rules

Effective January 1, 2010

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PROBATE, ADOPTION AND RELATED MATTERS

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DIVISION 7
PROBATE, ADOPTION AND RELATED MATTERS

CHAPTER 1
PROBATE FILINGS AND ORDERS

7.1.1 Additional Notice Requirements

A copy of the petition shall be served with each notice of hearing when served on a person requesting special notice or where the petition is the accounting of a testamentary trustee. Where the fiduciary or attorney is requesting fees or commissions other than those computed by Probate Code §§ 10800 et seq., the notice of hearing and a copy of the petition shall be served on all interested parties. The proof of service shall show service of the copy of the petition as well as the notice of hearing.

(Effective 7/1/08)

7.1.2 Notice by Clerk

The moving party shall prepare and submit to the Clerk as many copies of notices to be posted, published or mailed by the Clerk as the Clerk is required to post, publish or mail. Where the notice is to be mailed the moving party shall furnish to the Clerk envelopes addressed to those required to receive notice, with postage prepaid, and with the Clerk's address as the return address.

(Effective 7/1/08)

7.1.3 Notice Required for Special or Temporary Letters

The party seeking special letters of administration, or temporary letters of guardianship or conservatorship shall give notice of the application to the surviving spouse, proposed ward or proposed conservatee, other persons who might be expected to seek letters and any other person who appears to be equitably entitled to notice. Unless otherwise ordered, the notice given shall be the notice required for ex parte orders in generic civil matters. When a petition for special or temporary letters has been filed, there must appear in the petition for special or temporary letters a showing of good cause why a petition for permanent letters has not also been filed.

(Effective 7/1/08)

7.1.4 Heirs without Known Addresses

Where notice is mailed to an heir, devisee, or legatee at the County seat, an affidavit or declaration shall be filed with the proof of mailing showing due diligence made to locate that person.

(Effective 7/1/08)

7.1.5 Copies of Handwritten Wills and Codicils; Translation of Foreign Wills

A typewritten copy of the will or codicil shall accompany the petition for probate if the document is handwritten. If the document is in a foreign language, it shall be accompanied by a translation, signed by the translator, together with an affidavit or declaration under penalty of perjury showing the qualifications of the translator.

(Effective 7/1/08)

7.1.6 Wording of Probate Orders

Probate orders shall be worded so that their general effect may be determined without reference to the petition on which they are based.

(Effective 7/1/08)

7.1.7 Time for Submitting Papers and Orders

All papers relating to a probate hearing, including the proposed order prepared by the moving party, shall be filed or lodged with the Clerk at least four (4) court days before the date of hearing.

(Effective 7/1/08)

7.1.8 Uncontested Matters

(a) Appearance of Counsel. Except as otherwise provided by law, all verified petitions in probate matters shall be deemed submitted without an appearance, except that the attorney shall appear on a petition for confirmation of sale of (1) real property or (2) personal property valued in excess of $100. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator. As used in this rule, "verified" means verified by the petitioner. Before denying any petition where there is no appearance under this rule, the Court will continue the matter one week or until the next succeeding calendar day, whichever is later, to give the petitioner or petitioner's attorney an opportunity to appear. If there is no appearance or other response by the petitioner or petitioner's attorney at the continued hearing, the Court may drop the matter from the calendar.

(b) Proposed Order in Matters Submitted Without an Appearance. In matters submitted without an appearance by a party or the party's attorney pursuant to Rule 7.1.8(a), an original and one copy of a proposed order bearing the date of submission shall be delivered to the Clerk for presentation, together with the case file, to the Judge at least two court days before the hearing. Comment: It is the responsibility of the attorney to determine whether the matter has been approved or continued.

(Effective 7/1/08)

7.1.9 Orders for Family Allowance

The duration of an order for family allowance is limited to six months if no inventory and appraisement has been filed and to one year if an inventory and appraisement has been filed.

Comment: The Court discourages requests for retroactive (nunc pro tunc) payment of family allowance. Requests for a family allowance should be made in a timely fashion.

(Effective 7/1/08)

CHAPTER 2
Fees and Commissions

7.2.1 Fees and Commissions in General

Assignments of property to attorneys or personal representatives in place of fees or commissions will not ordinarily be approved. All attorney's fees or personal representative's commissions shall be set forth as such and approved by the Court. All attorney's fees and personal representative's commissions shall be stated, along with an explanation of how the fees or commissions were calculated, even if an accounting is waived.

(Effective 7/1/08)

7.2.2 Fees and Commissions in Advance

(a) Decedents Estates. There is no authority for the payment of any fees or commissions in decedents estate in advance of a court order authorizing the same, unless the written consent of the residuary beneficiaries is filed with the Court and the amounts paid are reasonable and proper or unless it can be shown that payment of such fees was to the benefit of the estate.

(b) Trusts. Fees or commissions shall be paid only after the services to which they relate have been performed. The payment shall be in conformity with the compensation provided in the trust instrument, if any, or otherwise be reasonable in amount.

(c) Guardianships and Conservatorships. Periodic payment of fees or commissions may be made with prior court authority pursuant to Probate Code § 2643. Without such prior authority, the Court will apply the same rule as in decedent's estates. The Court prefers that requests for fees for ordinary services be deferred until the first account.

(Effective 7/1/08)

7.2.3 Fees or Commissions Based on Fluctuating Values

In all accountings wherein fees or commissions are requested by the accounting party or his attorney based upon the fluctuating values of items constituting capital assets of the estate or trust, rather than the original or appraised values, the papers shall contain the following:

(a) A detailed statement, setting forth the original or appraised value of each item;

(b) A statement, showing the value of each item used as a basis for the request for fees or commissions, together with the date of valuation of the item; and,

(c) Proof by declaration or affidavit of service by mail at least ten days before the hearing of said petition of a notice of the date of hearing and a copy of the accounting on all persons having a beneficial interest in the trust.

(Effective 7/1/08)

7.2.4 Allowance on Account of Fees and Commissions

Allowances on account of statutory fees or commissions will be granted by the Court only in proportion to the work actually completed. Moreover, the last twenty-five percent (25%) of statutory fees or commissions will not be allowed before the approval of the final account and the decree of distribution, unless it can be shown that payment of a greater amount will benefit the estate. Until the final account is settled, the Court is unable to fix the total amount of statutory fees or commissions. Any allowance made before that time shall be low enough to avoid the possibility of overpayment.

(Effective 7/1/08)

7.2.5 Determination of Statutory Fees and Commissions

If an accounting is waived, the statutory fee is to be based upon only the stated inventory. In such cases, no fees are to be paid on gains on sales or on receipts by the estate.

(Effective 7/1/08)

7.2.6 Determination of Extraordinary Fees and Commissions

No appearance by the attorney or the parties will normally be requested where such petition is verified by the party and the fee does not exceed $750. However, all fees requested for extraordinary services shall be supported by a detailed description of such services. Each item that constitutes an extraordinary service shall be individually stated in the petition with a specific fee request for such service. The description shall indicate criteria that the Court may consider in awarding fees, such as complexity, size of the estate, result obtained, particular expertise brought to bear on the problem, time involved, and novelty of the issues.

(Effective 7/1/08)

7.2.7 [PROCEEDINGS UNDER PROBATE CODE 13650]

In proceedings under Probate Code 13650, for confirmation of community property to surviving spouse, all services shall be treated as extraordinary and described in detail.

(Effective 7/1/08)

CHAPTER 3
CLAIMS AND SALES

7.3.1 Creditor's Claims by Personal Representative

A noticed motion for approval of a creditor's claim filed by the personal representative, with service of the notice of motion on the heirs, is required unless:

(a) The claim is for reimbursement of funeral and last illness expenses and proof of payment is attached to the claim;

(b) The claim, together with all other claims of the personal representative except for reimbursement of funeral and last illness expenses, is less than $1,000; and,

(c) All persons beneficially interested in the estate approve the claim in writing.

(Effective 7/1/08)

7.3.2 Sale or Encumbrance of Estate Property

All petitions for the sale or encumbrance of estate property must be accompanied by a declaration under oath that the property sought to be sold is not specifically devised or bequeathed real or personal property. No specifically devised or bequeathed real or personal property shall be encumbered or offered for sale unless first approved by the Court on seven court days' notice to the specific devisee or legatee.

(Effective 7/1/08)

CHAPTER 4
ACCOUNTS AND DISTRIBUTION

7.4.1 Required Matters in a Petition for Final Distribution

In addition to items otherwise required by law, a petition for final distribution shall contain the following matters, unless set forth in the account and report:

(a) A full and complete description of all assets on hand.

(b) Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

(c) A computation of the attorney fees and representative commissions requested.

(d) An accounting if assets are to be distributed to a trustee, conservator or guardian.

(e) An agreement to the distribution signed by each heir with each signature acknowledged if distribution of assets is to be made in kind and all persons will not share equally in each asset.

(f) A schedule of names showing the name of the claimant, amount claimed, date presented, date allowed, and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth and the original of the notice of rejection with an affidavit of mailing to the creditor must, be filed.

(g) The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

(h) An itemization of costs for which counsel is seeking reimbursement. Ordinary overhead items, including but not limited to costs of duplication of documents, telephone calls, and automobile mileage are not proper cost items.

(i) A schedule showing the proration of taxes, fees, and costs.

(j) A statement of what property is separate and what is community.

(k) If distribution is to be made pursuant to an assignment of interest, the assignment shall be filed and acknowledged and the details of the consideration set forth.

(l) If distribution is to be made to a trust, either an acknowledged statement by the trustee accepting the property under the terms of the trust or a petition by the executor or administrator for the designation of a substitute trustee.

(m) If distribution is to be made to a minor or an incompetent, either facts showing compliance with Probate Code 3300 et seq. or current certified copies of letters of conservatorship or guardianship shall be filed.

(Effective 7/1/08)

7.4.2 Required Form of Accounts

All accounts filed in probate proceedings, including guardianships, conservatorships and trust accounts, shall contain a summary or recapitulation showing:

(a) Amount of inventory and appraisement, if first account, or amount chargeable from prior account.

(b) Amount of receipts excluding capital items.

(c) Gain on sales or other disposition of assets.

(d) Amount of disbursement.

(e) Loss on sales or other disposition of assets.

(f) Amount of property on hand.

(Effective 7/1/08)

7.4.3 [SUMMARY OF ACCOUNT]

A suggested form of summary is as follows:

SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively as set forth in this summary of account. The attached supporting schedules are hereby incorporated herein by reference:

CHARGES	
Amount of Inventory and Appraisement (OR, if subsequent account, amount chargeable from prior account)	$_____
Receipts during Account Period (Schedule "A")	$_____
Gain on Sales (Schedule "B")	$_____

TOTAL CHARGES:	$_____
CREDITS	
Disbursements during Account Period (Schedule "C")	$_____
Loss on Sales (Schedule "D")	$_____
Other Credits:	
(Property distributed, Homestead or other property set apart—Schedule "E")	$_____
Property on Hand (Schedule "F")	$_____
TOTAL CREDITS:	$_____

The summary should be supported by detailed schedules. The schedules of receipts and disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and indicate the appraised value.

(Effective 7/1/08)

CHAPTER 5
DISPOSITION WITHOUT ADMINISTRATION

7.5.1 Required Allegations in Support of Claimed Property as Community

The Court may require any person submitting a petition to determine and/or to confirm community property to provide to the Court, the following information in addition to that required by law. Counsel should be prepared to provide such information, if it is requested, at the first hearing on the petition in a form which would be admissible as evidence at an uncontested hearing.

(a) Date and place of marriage;

(b) Decedents occupation at time of marriage;

(c) Whether decedent owned any real or personal property on date of marriage and, if so, its description and approximate value at the time of marriage and whether it is still a part of the estate;

(d) Decedent's net worth at time of marriage;

(e) Whether decedent ever received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, its description, approximate value, dates of receipt, and whether it is still a part of the estate;

(f) A copy of any document on which the claim is based;

(g) The date decedent first came to California;

(h) Any additional facts upon which claim of community property is based.

(Effective 7/1/08)

7.5.2 Notice in Proceedings to Set Aside Community Property

Prior to the hearing on a petition to determine and/or confirm community property, the petitioner shall file a declaration showing compliance with the notice requirements of Probate Code § 13655.

(Effective 7/1/08)

7.5.3 Petition to Establish Fact of Death

A petition to establish the fact of death (terminate a joint tenancy or life estate) shall be verified and shall have attached as exhibits:

(a) A copy of any instrument relating to any interest in the property, and

(b) A copy of the death certificate.

Comment: There is no statutory provision for the determination by a court of attorney fees in proceedings for termination of joint

tenancy or a life estate. No request for fees for service of this character should be made.

(Effective 7/1/08)

CHAPTER 6
ADOPTIONS

7.6.1 Stepparent Adoption under Family Code §§ 9000, et seq.

(a) If a petition for adoption is filed under Family Code § 9000 without first having had a petition and order under Family Code §§ 7800 et seq., there shall be a special hearing entitled "necessity of consent" hearing.

(b) The Clerk shall immediately notify Family Court Services Division of the Court of the filing of the petition and the Family Court Services investigator shall report in the same manner as provided in Family Code § 7850.

(c) A citation in the form provided by Family Code § 7880 shall be issued on the filing of the petition and shall be served on the persons and in the manner described in Family Code §§ 7881 and 7882. The citation shall require the persons served to show cause, if any, why the minor shall not be found to be abandoned and the consent of the named parent to the adoption is unnecessary.

(d) The hearing date shall be on the regular adoptions calendar and the date selected shall be within sixty calendar days of the filing of the petition.

(e) The proceeding under this rule is in addition to that required by Family Code § 9000.

(Effective 7/1/08)

7.6.2 Adoption where Natural Father not Found

If it is claimed that an alleged natural father cannot be found, or is unidentifiable, the petitioner shall file a petition under Family Code § 7664 and the Clerk shall set a hearing on the regular adoptions calendar, to be scheduled within sixty calendar days of the filing of the adoption petition, to determine whether notice to any alleged natural father may be dispensed with and if the father is unidentifiable. The petitioner shall appear and present evidence at the hearing.

(Effective 7/1/08)

7.6.3 Military Affidavit

An affidavit under the Soldiers and Sailors Civil Relief Act is required in all adoption and abandonment proceedings where citations have been issued and the parties served have not appeared in the proceedings. If the petitioner or someone on his behalf is unable to make an affidavit that the parent served is not in the military service, the Court will accept the certificate alluded to in Section 601 of said Act.

(Effective 7/1/08)

7.6.4 Charges for Investigations in Stepparent Adoptions

There shall be a charge of $300 for each investigation conducted by the Family Court Services Division of this Court or by any court-appointed investigator for a stepparent adoption pursuant to Family Code § 9000, et seq. [formerly Civil Code § 227.10, et seq.]. This charge may increase from time to time by Policy Memorandum.

(Effective 7/1/08)

CHAPTER 7
ORDERS FOR WITHDRAWAL OF FUNDS

7.7.1 Application

When application is made for the withdrawal of funds on deposit under Probate Code § 1510, a deputy clerk shall submit the original court file together with the application for withdrawal of funds to the Judge who approved the compromise. If the Judge is not available, the application shall be submitted to any available Judge of this Court.

(Effective 7/1/08)

CHAPTER 8
GUARDIANSHIP & CONSERVATORSHIP INVESTIGATIONS

7.8.1 Investigation of Proposed Guardian

In conducting the investigation required under Probate Code § 1513, the Court investigator in his/her discretion may require the proposed guardian or guardians to submit a fingerprint card, and/or consent to a criminal, record history check. The results of this check may be included in the investigator's report to the Court.

(Effective 7/1/08)

7.8.2 Charges for Guardianship Investigations

There shall be a charge of $600.00 for each investigation conducted pursuant to Probate Code § 1513 charged to the petitioner. This charge shall be paid to the Family Court Services Division at the time an appointment is made for an interview. This charge may increase from time to time by Policy Memorandum.

(Effective 7/1/08)

7.8.3 Preparation and Filing of Order Appointing Guardianship Investigator

In each guardianship case where the petition seeks the appointment of a guardian of the person, the petitioner shall prepare, an Order Appointing Guardianship Investigator, and serve a copy on the office of Family Court Services.

(Effective 7/1/08)

7.8.4 Charges for Conservatorship Investigation

There shall be a charge of $400 for each conservatorship investigation conducted pursuant to Probate Code §§ 1826 or 1851. This charge shall be paid by the petitioner. Upon granting the petition, the conservator may apply ex parte for reimbursement of this charge from the conservatorship estate after filing the inventory and appraisement required under Probate Code § 2610.

(Effective 7/1/08)

7.8.5 Ability to Pay

If a party required to pay an investigation charge under Local Rule 7.8.2 or 7.8.4 believes that neither the party nor the estate has the ability to pay the cost of the investigation, the party requesting relief shall submit a request for relief in compliance with Local Rule 5.1.2.

(Effective 7/1/08)

7.8.6 Required Orientation by Proposed Probate Conservators

All persons who are proposed conservators of either the person or the estate of a proposed conservatee shall attend and view an orientation videotape at the office of the Family Court Services. The proposed conservator will be required to purchase the Judicial Council publication from the Civil Division entitled, "Handbook for Conservators." Pursuant to Probate Code § 1835(f), the charge for this handbook is $20.00.

(Effective 7/1/08)

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Marin County
Rules of Probate Practice

Effective January 1, 2010

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5. PROBATE RULES
(See also CRC Title Seven)

ORGANIZATION—ADMINISTRATION—PROCEDURE

5.1 CITATION

These probate rules should be cited as "Marin County Rule, Probate" or "MCR Prob" followed by the rule number (e.g., Marin County Rule, Probate 5.1 or MCR Prob 5.1).

[Adopted effective 5/1/98]

5.2 PROBATE CALENDAR DAYS AND PRESIDING OFFICER

A. Calendar Call. The Court's probate calendar is heard each Monday at 9:00 a.m., as designated by the Presiding Judge. When Monday or the day designated for the probate calendar is a legal holiday, the calendar is heard at the same time on the next court day.

B. Telephone Appearances. Counsel may appear by telephone as allowed by CRC 3.670. Refer to MCR Civ 1.26 for procedure.

C. Presiding Officer. If matters are heard by the Probate Commissioner, an announcement that the Commissioner sits as a Temporary Judge on stipulation of all counsel will be made at the beginning of each probate calendar. Should any party object to

the Commissioner hearing the matter as Temporary Judge, the objection must be made at the time the matter is called for hearing. A failure to object shall be deemed a stipulation that the Commissioner hear the matter as Temporary Judge.

1. Report of Commissioner. When a party declines the pro tem stipulation, the Commissioner is assigned to hear the matter and to report on the matter under Code of Civil Procedure §259, the Government Code and other relevant statutes and rules.

[Adopted effective 5/1/98; amended 7/1/08]

5.3 COURT HEARING PROCEDURE GENERALLY AND ORDERS

A. "Ready" and "Not Ready" Matters. A matter is considered "ready" when all required documents and the proposed order are in the file at least five court days preceding the hearing, no opposition has been received, and the Court is prepared to grant the relief requested. Approved orders signed by the Court will be available in the Clerk's Office by 10:00 a.m. the first business day after the hearing. If no appearance is made on a matter which is not "ready," it will be continued at least two weeks. Information on continuances may be obtained by calling the Probate Examiner at (415) 444-7315.

B. Order of Calendar Call and Witnesses. Matters are heard in the following order: ready matters and continuances, uncontested matters with defects to be corrected, other matters estimated to take five minutes or less, sales, contested matters with a hearing time of 20 minutes or less. If a contested matter will take in excess of 20 minutes, it will be heard at the end of the calendar, if time allows, or may be specially set. If witnesses are to be called, contact the Probate Examiner to ascertain if the matter will be heard or must be specially set for another date.

C. Oral Objection. If an oral objection to the granting of a matter is made, and the attorney for the estate has not appeared, the matter will be continued for at least two weeks for the filing of objections and any response to the objections. Any previously signed order will be set aside.

D. Orders. Orders on "ready" matters will be signed and filed. Conformed copies and related papers will be placed in "Will Call" in the Clerk's Office. No documents will be mailed unless a self-addressed, stamped envelope is provided.

E. File Review Prior to Hearing; Telephone for Probate Recording. All files are reviewed by the Probate Examiner prior to the day of hearing. Tentative rulings may be obtained online (http://www.marincourt.org/tentative_landing.htm) or by telephoning the Probate recording at (415) 473-7545 after 12:00 p.m. on the court day preceding the hearing.

F. Appearance Not Required. Matters on the probate calendar which are "ready matters" (see above) do not require an appearance.

G. Appearance Required. Personal appearance by counsel will be required in the following cases:

1. Contested Matters. Counsel are required to appear in all contested matters. If the matter will take longer than 20 minutes to be heard, counsel should appear to have the matter set for hearing; all interested counsel must be present for such setting.

2. Uncontested Matters Where Court's Tentative Ruling Differs From Relief Requested. In uncontested matters where the judicial officer recommends relief different from that sought, counsel must appear and object. If no appearance is made, the order will be signed in the form recommended by the judicial officer.

3. Confirmation of Sales. Hearings on petitions for court confirmation of sales of real property.

4. Appointment of Conservator/Guardian. On applications for appointment of guardian or conservator, an appearance by proposed conservatee is required unless an adequate doctor's declaration is on file or the Court Investigator's Report indicates that the proposed conservatee has been advised of his/her rights, is in agreement with the conservatorship and does not wish to attend the hearing or the appearance is excused by the Court.

5. Other Matters. Any matter which by law requires the personal appearance of any person or any matter which the Court may in its discretion require an appearance.

[Adopted effective 5/1/98; amended 1/1/10]

5.4 CONTINUANCES

A. Renotice Requirements on Continuances and Off-Calendar Matters. Generally, no further notice is required when a properly noticed probate matter is continued to a specified date. Where a matter has been ordered off calendar, new notice will be required if the matter is later reset on calendar. Any matter requiring publication which is taken off calendar will require new publication.

B. Continuance Requested by Counsel. Unless formal objections have been filed, or an appearance has been requested by the Court, the moving party may request a continuance by telephone to the Probate Examiner's Office no later than noon of the court day preceding the hearing. A continuance will not be granted if there is opposing counsel unless the request is made in open court or by stipulation of all counsel. In addition:

1. Special Sets. If a matter has been specially set, it may not be continued or advanced without the written stipulation of all counsel and the approval of the judicial officer scheduled to hear the matter.

2. Probate Sales. Probate sales cannot be taken off calendar or continued except for good cause. Appearance by counsel is required at the time set for sale.

[Adopted effective 5/1/98; amended 7/1/08]

5.5 EX PARTE MATTERS

A. Contents of Petition. A petition for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing the order. Evidence to support such nonappearance matters should be contained in the verified petition and/or declarations under penalty of perjury timely filed before the hearing date; oral evidence is available only in accordance with the California Rules of Court governing Law and Motion matters. Conclusions or statements of ultimate facts are not sufficient to support such ex parte petitions and a foundation should be shown for the petitioner's personal knowledge.

B. Special Notice Allegation. All petitions for ex parte orders must contain a statement on special notices. The statement shall either recite that no request for special notice is on file and in effect or shall list the parties requesting special notice and have attached the specific waivers of notice by such parties or proof of service on such parties.

C. Presentation of Petition. Ex parte petitions will be heard between 8:30 a.m. and 9:00 a.m. by appointment. Please call the Probate Examiner at 473-6421 to schedule a date and time.

D. Separate Order Must Accompany Petition. Except where a Judicial Council form is used, a petition for ex parte order must be accompanied by a separate order complete in itself.

E. Ex Parte Orders. An ex parte order may be signed by either the Commissioner or the Judge.

[Adopted effective 5/1/98; amended 7/1/08]

5.6 QUESTIONS OF PROCEDURE

Should counsel encounter procedural problems that cannot be resolved by reference to the Probate Code, Rules of Court, these Local Rules, or legal research, such matters may be presented to the Court informally. Initially, such matters should be presented to the Court by letter or directly to the Probate Examiner so that proper consideration can be given to the problem.

[Adopted effective 5/1/98; amended 7/1/08]

5.7 SETTLEMENT CONFERENCES

A. Mandatory Settlement Conference. A mandatory settlement conference shall be held in all cases where a trial or evidentiary hearing has been demanded. The date for the settlement conference shall be assigned at a status conference.

B. Settlement Conference Statement. Counsel shall lodge an original and two copies of a settlement conference statement in the Calendar Department (Room 113) 10 court days before the settlement conference so that the statements can be distributed to the settlement panelists. The court will impose sanctions of $49 per day for statements lodged less than five court days before the settlement conference. The date and time of the settlement conference and trial/evidentiary hearing shall be typed on the face sheet of the statement. The settlement conference statement shall include the following, where applicable:

1. A brief statement of the case;

2. A statement of facts including: (a) factual and legal contentions in dispute; and (b) citations of authorities which support legal propositions;

3. The current offer or demand of party filing statement;

4. The date when the last face-to-face settlement discussion was held;

5. Presentation of any special barriers to settlement.

C. Required Attendance. Attendance at settlement conferences by counsel completely familiar with the case is required. Counsel must be accompanied by his/her client. Exceptions to this rule require advance written approval by the Court.

D. Sanctions. Failure of an attorney and/or party to prepare for, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, is an unlawful interference with the proceedings of the Court, and the Court may impose sanctions, including, but not limited to, any or all of the following: monetary sanctions to be paid to the Clerk of the Court; monetary sanctions to be paid to the other parties which may include, among other things, costs, actual expenses and counsel fees; and the Court may order an appropriate change in the calendar status of the action.

[Adopted effective 5/1/98; amended 7/1/08]

5.8 CONFORMED COPIES

If a conformed copy is desired, an additional copy must be submitted. The Court will conform a maximum of two copies of any pleading at the time of filing. Parties requesting that the Clerk's Office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage. If no envelope is provided, the conformed copy will be placed in the Will Call cabinet in the Clerk's Office in Room 113 for a maximum of sixty (60) days. If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face copy of the pleading will be mailed and the conformed copy will be placed in the Will Call cabinet for a maximum of sixty (60) days.

[Adopted effective 1/1/10]

PLEADINGS, ORDERS AND NOTICE

5.9 FORMS APPROVED BY JUDICIAL COUNCIL

For matters for which a printed form has been adopted for mandatory use by the Judicial Council, such form shall be used. All pertinent items must be checked. If a form approved or adopted by the Judicial Council or a Marin County local rule form is inadequate for a given circumstance, an addendum may be attached. No printed forms other than those so approved or adopted may be used.

[Adopted effective 5/1/98; amended 7/1/08]

5.10 DECLARATIONS

A declaration may be used in lieu of an affidavit pursuant to Code of Civil Procedure §2015.5.

[Adopted effective 5/1/98; amended 1/1/04]

5.11 CONTENT OF PROBATE ORDERS

An order must be complete in itself and must set forth with particularity all matters actually passed on by the Court, the date of hearing, necessary findings, the relief granted, and the names of persons and legal descriptions of property or amounts of money affected. A probate order should be drawn so that its general effect may be determined without reference to the petition on which it is based.

[Adopted effective 5/1/98]

5.12 ORDERS FOR CONTINUING PAYMENTS MUST HAVE TIME LIMITS

All orders for continuing payments must provide that payments shall begin as of a fixed date and continue for a fixed period not to exceed one year. The Court ordinarily will not make orders for continuing payments to run until further order of the Court.

[Adopted effective 5/1/98]

5.13 NOTICES (SEE ALSO Cal Rules of Ct 7.51)

A. Generally.

1. *Service.* When notice of hearing is required — whether by personal service, mailing, publication or posting — petitioner must give such notice or cause it to be given, and file the necessary proof of service.

2. *Content.* Notices must specify *all* the relief sought. Failure to specify all relief sought will result in renoticing the petition.

3. *Amended Petitions.* Statutory notice requirements apply to all amended petitions, even though the prior petition has already been noticed for hearing.

4. *Continued Dates and Off Calendars.* Generally, no further notice is required when a properly noticed probate matter is continued to a specified date. Where a matter has been ordered off calendar, new notice will be required. Any matter requiring publication which is taken off calendar will require new publication.

5. *Additional Notice.* The Court may require *additional notice in any matter.* Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial compensation for extraordinary services are requested. The Court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or that a copy of the petition be served with the notice.

B. Notices to Minors. When a minor, who is over the age of 12, is entitled to notice, the giving of notice to a parent is insufficient. The Court requires notice to a minor to be addressed to the minor and mailed individually and directly to the minor. Notice in care of a parent is insufficient although a copy shall also be sent to the parents.

C. Direct Notice Required. Notice in care of an attorney will be accepted only if a Request for Special Notice is on file or an appearance has been made.

D. Notice to Guardians, Conservators, Conservatees. In Guardianship and Conservatorship proceedings, direct notice shall be mailed to the conservatee or minor and to their attorney if they are represented. Notice to a conservatee must be accompanied by a copy of the petition. When a guardian or conservator has been appointed for the person entitled to notice in a non-conservatorship or guardianship matter (i.e., a civil matter, etc.), the Court requires that notice be given directly to the conservator or guardian.

E. Notice to Heirs and Devisees Without Known Addresses. If the address of an heir or devisee is unknown, Petitioner must file a declaration describing efforts made to locate that person before the Court will prescribe an alternate form of notice or dispense with notice. The declaration must state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's business and residence addresses by: (1) inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding; (2) review of appropriate city telephone directories and directory assistance; and (3) search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside. (See Cal Rules of Ct 7.52(a).)

F. Notice to Trust Beneficiaries. If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust and the representative is either named to act or is acting as the sole trustee, then the Court will require notice to beneficiaries as required by Probate Code §1208. In appropriate circumstances the Court may require the appointment of and notice to the guardian ad litem for potential beneficiaries if their interest may diverge significantly from those of the beneficiaries in being. This notice requirement applies to both testamentary trusts and pour over wills to an intervivos trust. The Court requires that a copy of the trust document be lodged with the court to verify the persons requiring notice or a declaration by the attorney be filed stating the trust beneficiaries entitled to notice.

G. Notice on Termination of Guardianships and Conservatorships. Notice must be given to a *former* minor or conservatee on the settlement of a final account. Notice must also be given to the personal representative of a deceased minor or conservatee. If the representative of the estate is the same person as the guardian or conservator presenting the account, notice must also be given to the heirs and devisees of the deceased minor or conservatee.

H. Notice to Heirs and/or Beneficiaries of a Deceased Beneficiary. If an heir or beneficiary whose interest has vested dies during administration of a probate estate, notice is required to be given to the personal representative of the beneficiary's estate, or if none, to the heirs and/or beneficiaries of the will of the deceased beneficiary.

I. Posted Notice. In all cases where posted notice of hearing is required, the Probate Clerk will prepare and post the notice. The clerk is not responsible for publications or mailings. Other notices will be posted upon request.

J. Order Prescribing or Dispensing with Notice. In all cases where notice is prescribed by the Court, an order prescribing notice must be obtained at the time the petition is filed. The petition and the proposed order prescribing notice should be presented to the Commissioner prior to filing. Where notice may be dispensed with, an order dispensing with notice must be obtained.

[Adopted effective 5/1/98; amended 1/1/04]

SPOUSAL PROPERTY PETITION AND ELECTION

5.14 FILING AND CONTENTS OF SPOUSAL PROPERTY PETITION

If a spousal property petition is filed with a petition for probate of will or for Letters, the spousal property petition must be filed as a separate petition. (Cal Rules of Ct 7.301.)

[Adopted effective 5/1/98; amended 1/1/04]

5.15 REQUIRED ALLEGATIONS

A. Source of Property. In petitions where the decedent died *intestate*, the petition must contain the date of marriage and a precise identification of the property community, quasi community, or separate property. The declaration must state facts supporting the character of the property as community, quasi community, or separate property. A copy of the latest deed for any real property should be attached to the petition. If any property is claimed to be community but was acquired by gift, devise, descent, joint tenancy survivorship, or similar means, the petition must state with particularity the way in which the property was converted to community property. For all transmutations of title to real or personal property made after January 1, 1985, there must be an express written declaration that is made, joined in, consented to or accepted by the spouse whose interest in the property is adversely affected. If the decedent died *testate*, generally attachment of the Will to the petition will suffice.

B. Claims Based on Documents. If the community or quasi-community property claim is based on any document, a copy of the document showing signatures, when feasible, must be attached to the petition. However, if the document is lengthy and only portions of it are relevant to the claim, only the relevant portions need be attached. If it is believed that disclosure of the document would be detrimental, the document or the relevant portions may be paraphrased in the petition accompanied by a statement that a copy of the document itself will be made available to the Court.

[Adopted effective 5/1/98; amended 7/1/00]

5.16 ELECTION OF SURVIVING SPOUSE TO ADMINISTER

If the surviving spouse elects under Probate Code §13502 to administer property, the surviving spouse must file an election and state he or she has been fully informed regarding the reasons for the election, including the potential delay and increased compensation. If the surviving spouse files the election to transfer one-half of the community property to a trustee (see Prob C §13503), the surviving spouse's one-half shall not be included in the basis for statutory compensation.

[Adopted effective 5/1/98]

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS:
PROOF OF WILLS

5.17 SPECIAL LETTERS OF ADMINISTRATION

The verified petition for a special administrator must be personally presented to the Judge or Commissioner. Such petitions ordinarily will not be granted without 24 hours' notice to the surviving spouse, the nominated executor, and any other person who, in the opinion of the Judge or Commissioner, appears to be entitled to notice. The petition should include the *specific* reason indicating the necessity of the appointment. Except in a will contest, Letters of Special Administration will issue for only a specified period of time. Although preference is given to the person entitled to Letters Testamentary or of Administration if it appears that a bona fide contest exists, the Court will consider appointing a neutral person or corporate fiduciary.

A special administrator cannot be granted powers under the Independent Administration of Estates Act (IAEA) unless proper publication and notice has been completed.

[Adopted effective 5/1/98]

5.18 PETITION FOR PROBATE OF WILL AND LETTERS OF ADMINISTRATION

A. Holographic Will and Foreign Language Will. When a holographic instrument is offered for probate, all copies presented must be accompanied by a typewritten copy. Where an instrument written in a foreign language is offered, it must be accompanied by a copy translated into English by an official translator approved by the Court.

B. Attachments. Copies of all instruments offered for probate must be attached to the petition.

C. Listing Devisees and Heirs

1. Even though a decedent died testate, the petition must contain the names and relationships of all the heirs of the decedent. An heir is any person who would be entitled to distribution of a part of the decedent's estate including those who would be heirs if the decedent had a predeceased spouse or if the decedent had died intestate. When second generation heirs are listed, the deceased ancestor through whom they take shall be named, along with the ancestor's relationship to decedent.

2. All heirs or devisees, or other persons named in the will and each person named as executor or alternate executor who is not petitioning must be listed in the petition. In addition, if the interest of the devisee is contingent as of the date of the petition or the happening of an event, such as survivorship for a specific period, then the contingent devisee must also be listed. Also to be listed in the petition is each person provided for in the original will whose bequest has been revoked in a subsequent codicil.

3. If a named devisee predeceased the decedent or did not survive for the designated survival period, that fact must be stated together with the approximate date of death.

4. If an heir or devisee died after the decedent, that person should be listed with the notation that he or she is deceased and the date of death. If a personal representative has been appointed, the deceased heir or devisee should be listed in care of the name and address of his or her personal representative. If no personal representative has been appointed, that fact should be alleged.

D. Value of Estate. If the value of the estate is under $100,000, the petition must be accompanied by a declaration showing why the estate is being probated, rather than passing by summary proceedings.

[Adopted effective 5/1/98; amended 7/1/08]

5.19 NOTICE REQUIREMENTS OBTAINING LETTERS IN DECEDENT'S ESTATES

A. Letters Testamentary and Letters of Administration. The attorney is responsible for obtaining Letters, including notice and publication. notice must be given to the Attorney General and foreign consulate as required by the Probate Code.

B. Methods of Giving Various Notices. See MCR Prob 5.13 above.

C. Requirement of Publication of Notice to Administer Estate. The publication of Notice of Petition to Administer Estate under Probate Code §8120 is sufficient to include all instruments which are offered for probate, filed with and specifically referred to in the petition for which notice is given. Any other wills or codicils not specifically mentioned in the petition must be presented to the Court in an amended petition and a new Notice of Petition to Administer Estate must be published and mailed. It is the responsibility of the attorney to arrange for publication; the Clerk does not have this responsibility. The proper newspaper for publication must be selected. The priorities are:

1. Publication is required in the adjudicated newspaper for the city where the decedent resided at the time of death, or where decedent's property is located if the decedent is a non-resident. (See Appendix A for the list of adjudicated newspapers.)

2. If there is no such newspaper in the city or the decedent resided in an unincorporated area, then notice shall be published in a newspaper of general circulation which is found and circulated in the community where the decedent lived. For an unincorporated area, publication may be made in the adjudicated newspaper for the postal address. Publication must conform to law. Currently, the law requires publication 15 days in advance of the hearing date. Three publications in a newspaper published once a week or more often with at least five days between the first and last publication dates (not counting the publication dates), are sufficient.

D. Defective Notice.

1. *Defective mailing.* If the publication is correct but the mailing defective, the hearing normally will be continued to allow enough time for the required new mailing.

2. *Defective publication.* If the mailing is correct but the publication defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

[Adopted effective 5/1/98]

5.20 PROOF OF WILLS

In uncontested matters, both witnessed and holographic wills may be proved by declaration without the need of testimony in open Court. There is a preference for a nonbeneficiary to prove a holographic will. Where more than one testamentary instrument is offered for probate, each instrument must be proved by a separate declaration.

[Adopted effective 5/1/98]

5.21 LOST OR DESTROYED WILLS

The petition for probate shall include a written statement of the testamentary words or their substance. Evidence will be required to overcome the presumption of revocation. A copy of the will admitted to probate, if available, shall be attached to the order for probate.

[Adopted effective 5/1/98; amended 1/1/04]

5.22 WILL WITH DELETIONS OR INTERLINEATIONS

Where the will offered for probate contains alterations by interlineation or deletion on the face, the petition for probate should contain allegations to explain the alteration and support petitioner's position in the matter. The petition should request that the interlineated portion be admitted or not admitted; that the deletions take effect or be disregarded; or make such other request as petitioner finds to be appropriate. The petition should set forth in an attachment, statements of all relevant facts regarding the alteration, for example, whether the will was in possession of decedent, and should include a statement of applicable law.

[Adopted effective 5/1/98]

BOND

5.23 APPLICATION OF BOND SECTION

These guidelines (MCR Prob 5.24 to 5.29 below) apply to guardians, conservators and trustees, as well as to personal representatives.

[Adopted effective 5/1/98]

5.24 RESERVED

[Adopted 7/1/08]

5.25 REQUIREMENT OF BOND/WAIVER OF BOND (SEE Cal Rules of Ct 7.201)

A. Personal Representatives in Probate Estate. Even if the Will waives bond, or if the Court directs no bond be filed, or be filed in a reduced sum, the Court on its own motion, or on petition of any person interested in the estate may, for good cause, require the bond be given or amount increased, either before or any time after issuance of letters.

1. *No Bond Required.* Ordinarily, no bond will be required of the personal representative in the following circumstances: (a) where the Will waives bond of the nominated personal representative; (b) where the petitioner is the sole beneficiary under the Will, or (c) all beneficiaries of the estate waive bond. Where appropriate, counsel should file a declaration to assist the Court. The Court, in its discretion, may require a bond.

2. *Bond Required.* In all other circumstances, except for those set forth above, the Court will require a bond. If the personal representative has full IAEA powers, a bond for both personal and the equity in real property must be obtained. If the personal representative has limited IAEA powers, a bond shall be obtained for all of the property, excluding the real property.

B. Conservatorships/Guardianships. Ordinarily, bond will not be waived in conservatorships or guardianships.

[Adopted effective 5/1/98; amended 1/1/04]

5.26 REDUCING BOND THROUGH USE OF DEPOSITORY FOR BLOCKED ACCOUNT

A. Before Issuance of Letters. The receipt and agreement of depository required by the Probate Code must be filed prior to the issuance of Letters.

B. After Appointment. Bonds may be reduced at any time after appointment by a petition and order reducing bond, together with a receipt of a depository showing assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate, after excluding those held by the depository, and it must appear that the reduced bond adequately covers the amount to be protected.

C. Direct Transmittal to Depository. If the assets to be deposited are in the possession of a bank, savings and loan association

or trust company other than the named depository, the order should direct the entity in possession to deliver such assets directly to the named depository and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary. (Fin C §765)

D. Withdrawals or Releases from Depository. An order authorizing release from a blocked account may be obtained ex parte. The petition should set forth the approximate bond, and the purpose for which the withdrawal is being made. The order may provide for funds to be paid directly to a taxing authority or beneficiary or other person entitled thereto.

E. Letters. Any Letters issued where accounts have been blocked should include the statement: "Account located at (institution name) has been blocked and receipts for the blocked account have been filed with the Court."

[Adopted effective 5/1/98]

5.27 BOND MODIFICATION

A. Duty and Application. It is the duty of the fiduciary or the fiduciary's attorney, upon becoming aware that the bond is insufficient (e.g., on filing of an inventory or submitting an accounting), to apply immediately for an order increasing the bond. Such application may be made ex parte.

B. Bond Increase. When the bond of a fiduciary must be increased, the Court favors filing of an additional bond rather than a substitute bond. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the Court to determine the amount of the increase.

C. Bond Decrease. When the fiduciary's bond should be decreased, the Court favors using an order reducing the liability on the existing bond rather than a substitute bond. Where a decrease in bond is sought because distribution has been made, copies of receipts evidencing the distribution should be presented with the petition.

[Adopted effective 5/1/98]

5.28 NONRESIDENT EXECUTORS

A nonresident nominated to serve as executor without bond will usually be required to post bond.

[Adopted effective 5/1/98; amended 7/1/08]

5.29 BOND OF SPECIAL ADMINISTRATORS

In the case of ex parte appointments of special administrators, the Court will usually require a bond even if the Will waives the bond and the beneficiaries waive bond.

[Adopted effective 5/1/98]

INVENTORY AND APPRAISAL

5.30 PREPARING INVENTORY AND APPRAISAL

A. Preparation. The California Probate Referees' Association has published a pamphlet, *Probate Referees' Procedures Guide*, describing the suggested form for listing various inventory assets as well as its opinion as to whether particular assets should be listed on Attachment 1 or 2. Although not an official publication, this pamphlet is a good reference. Copies are available from the California Probate Referees' Association, 465 California Street, Suite 702, San Francisco, CA 94104. Please refer to this pamphlet for specific information on completing an inventory and appraisal.

B. Due Date. The inventory and appraisal for a decedent's estate is due within four months from appointment of a personal representative.

[Adopted effective 5/1/98; amended 1/1/04]

5.31 APPOINTMENT OF REFEREE

A. Procedure for Request. To obtain appointment of a Probate Referee, the appropriate box on the Order for Probate should be checked. The Clerk will return the Order with a Referee appointed. If a Referee has not been assigned on the Order for Probate, an Order Appointing Probate Referee should be submitted to the Court.

B. Request for Particular Referee. Requests for the appointment or nonappointment of a certain Referee will generally be

denied and are discouraged.

C. Waiver of Appointment of Referee. The appointment of a Probate Referee may be waived for "good cause" under Probate Code §8903, et seq. The decision whether good cause exists will be made by the Court on the basis of the facts set forth in the petition. The petition, including a copy of the proposed inventory and appraisal, and notice of hearing shall be served on all persons who are entitled to notice pursuant to Probate Code §8903. The petition shall state the source of the values included in the inventory and appraisal. Waivers of appointment are not routinely granted.

[Adopted effective 5/1/98]

5.32 RESERVED

[Adopted effective 7/1/08]

5.33 SUFFICIENCY OF BOND

If there is a bond in force, the inventory and appraisal must disclose on its face, at the place on the form above the attorney's signature, whether the amount thereof is sufficient or insufficient. See MCR Prob 5.27 regarding bond modification.

[Adopted effective 5/1/98]

5.34 OBJECTION TO APPRAISED VALUE OF ASSETS

Prior to the filing of the inventory and appraisal, counsel are encouraged to engage in informal discussion with the Probate Referee to resolve disagreements over the value of particular assets. After the filing of the inventory and appraisal and before a hearing on the Petition for Final Distribution, the personal representative or an interested person may file a written objection to the value of assets on the appraisal.

[Adopted effective 5/1/98; amended 7/1/08]

CLAIMS

5.35 CLAIMS PROCEDURES

All claims in probate proceedings must conform to the provisions of Probate Code §9000 et seq.

[Adopted effective 5/1/98]

5.36 NOTICE TO CREDITORS

Notice to creditors must be given as provided in the Probate Code. A showing that affirmative efforts to locate and notify creditors, both known and reasonably ascertainable, is required under the Probate Code and must be set forth in the final report.

[Adopted effective 5/1/98]

SALES OF ESTATE PROPERTY

5.37 GENERAL INFORMATION

A. Judicial Approval. For estates being administered with full authority under IAEA, judicial approval of sales or exchanges of real or personal property is no longer required; otherwise confirmation of sales is still required.

B. Notice. Notice shall be given to the devisee of specifically devised property and to all residuary beneficiaries. The original purchasers of the property whose bid is being returned to Court for confirmation shall also be noticed.

C. Exclusive Listings for Sale of Property. A personal representative acting under IAEA has authority to enter into an exclusive agreement to sell real property without prior Court approval. If Court confirmation is sought, either because of limited IAEA or pursuant to the Agreement of Sale, at the hearing on confirmation of sale, the Court may determine the total commission without regard to the terms of the exclusive agreement.

D. Purchase of Estate Property by Personal Representative. Although the purchase of estate property by the personal representative is generally prohibited, such purchase may be allowed under limited circumstances subject to Court approval.

[Adopted effective 5/1/98; amended 7/1/08]

5.38 SALES OF PERSONAL PROPERTY

A. Tangible Personal Property

1. Necessity for Appraisal. In all cases other than those administered with full IAEA, the sale of tangible personal property will ordinarily not be approved unless the property has been appraised. For this purpose, a partial inventory and appraisal may be filed or a letter appraisal may be obtained from the appointed Probate Referee.

2. Commissions. Commissions on sales of tangible personal property will be allowed only to individuals holding a license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in Court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the Court's discretion and will ordinarily conform to the amounts found below.

B. Securities. The petition for authority to sell securities must set forth a minimum sales price as to all securities except those listed on an established exchange. The minimum price must be a recent market quotation from the New York Stock Exchange, American Exchange or an over the counter market. If there is no recent market quotation available or the securities are "closely held," the petition must set forth the basis for fixing the minimum sales price.

C. Condominiums, Community or Cooperative Apartments. A condominium or cooperative apartment is an interest in real property and must be sold as such, unless it is held as a limited partnership. (Civ. C. §783) The sale of a cooperative apartment will not be confirmed subject to the original (returned) purchaser later obtaining the acceptance of a Board of Directors or other governing body. If there is an overbid, the Court, at the request of the personal representative, will then continue the matter for the purpose of obtaining acceptance. If the personal representative does not wish to continue the matter for this purpose, the Court will not accept the overbid.

[Adopted effective 5/1/98; amended 7/1/08]

5.39 RETURN OF SALE OF REAL PROPERTY

A. Publication of Notice of Intention to Sell Real Property. Notice of Intention to Sell Real Property must be published in decedents' estates (except for estates in which there is a power of sale in the will or estates being administered under full IAEA) and in all conservatorships/guardianships unless the Court has granted the conservator/guardian power to sell. Publication must be in a newspaper published in the county in which the real property lies.

If an executor having power of sale in the Will publishes a notice of sale of the real property and proceeds with the sale and a technical defect appears, the defect cannot be cured by exercising the executor's power of sale. The executor must publish a new notice.

B. Contents of Notice and Purpose of Notice. The notice should include the date and place of sale, not the date of the confirmation hearings. The published notice is a solicitation for offers. No offer can be accepted until the date on or after the time for making bids expires. In addition to a legal description of the property, the notice should contain the street address or other common designation of the property, when available, and should also state the following, where applicable:

1. If an exclusive listing has been given, the notice should so state.

2. If the property is to be sold subject to an encumbrance, the notice should so state.

3. If the property is to be sold for cash only, the notice must so state.

4. If the estate would prefer all cash but will accept part cash and part credit, the notice should include the following language: "All cash, or part cash and part credit, the terms and conditions of credit as acceptable to the fiduciary and the Court."

C. Effect of Notice. Any offer accepted and returned to Court for confirmation must conform to the terms of sale contained in the notice.

[Adopted effective 5/1/98]

5.40 RETURN OF PRIVATE SALE FOR COURT CONFIRMATION

A. Appraisal and Reappraisal. In order for a private sale to be confirmed, there must be on file an appraisal by the Probate Referee of the property and, if required, a reappraisal by the Probate Referee if the decedent's date of death or guardian's or

conservator's appointment occurred more than one year before the date of the confirmation hearing. The appraisal and reappraisal should be on file prior to the hearing date on the return of sale but counsel may bring the reappraisal to the court hearing.

B. Market Exposure of Property. Whenever it is brought to the attention of the Court that the fiduciary has denied bona fide prospective buyers or their brokers a reasonable opportunity to inspect the property, or the property has not had maximum market exposure, the returned sale will not be confirmed, and the sale will be continued to allow inspection and further exposure to the market.

C. Second Deeds of Trust. The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

D. Hearing on Return of Sale and Overbids. Counsel must be prepared to state the minimum necessary overbid price. Counsel should give notice to the original purchaser or his agent of the time and place of hearing and advise that they be in Court for the hearing.

E. Earnest Money Deposit by Overbidder. When a sale is confirmed to an overbidder, the overbidder, at the request of the personal representative, must submit at the time of hearing a certified or cashier's check in the amount of 10 percent of the entire amount of the bid, but not to exceed the amount of the cash down payment.

F. Bond. The petition for confirmation of sale of real estate should set forth the amount of the bond in force at the time of sale. If no additional bond is required, or if bond is waived, that fact should be alleged. If additional bond is required after confirmation of sale of real property, the petitioner should provide sufficient information to the Court to determine the net proceeds of sale and the amount of the required additional bond. If proceeds are to be placed in a blocked account, the matter will be placed on the following week's probate calendar for verification that a receipt for the blocked account is on file. If additional bond is required in the confirmation order, the Court will not enter the order until the additional bond is filed. (CRC 7.206.)

G. Absence of Attorney for Estate at Confirmation Hearing. If someone is present who wishes to overbid and the estate's attorney is absent, the hearing will be continued, except where the fiduciary is present and requests that the sale proceed without the attorney.

H. Partial Interest. Where the estate has a partial interest in real property, all information in the petition should refer ONLY to the partial interest, including the overbid amount. If the additional interest is also being sold outside of Court, the total bid necessary should be announced in open court.

[Adopted effective 5/1/98; amended 7/1/08]

5.41 BROKER'S COMMISSIONS

A. Improved Real Property. The Court will ordinarily allow a broker's commission not to exceed 6% of the first $100,000 and 5% of any excess over $100,000. It is understood that commissions are negotiable and the parties may agree to a lesser percentage.

B. Unimproved Real Property. The Court will ordinarily allow a broker's commission not to exceed 10% of the first $20,000, 8% of the next $30,000, and 5% of the balance of the sale price. In the Court's discretion, a flat 10% may be allowed. In each instance, the Court will determine what is "unimproved" real property.

C. Commission Rates at Real Property Situs Will Apply. When the real property is not located in Marin County, the Court will allow commissions based on the Marin Probate Court schedules unless it is shown that a larger commission would be allowed based on the schedule in effect in the Probate Court of the County in which the property is located.

1. *Commissions in Excess of Schedule.* A commission exceeding the normal schedule will be allowed only if it is reasonable in the opinion of the Court. The written agreement of the affected beneficiaries to the allowance of such commission should be obtained.

D. Broker Bidding for Own Account Not Entitled to a Commission. A broker bidding for his own account is not entitled to receive or share in a commission.

E. Broker's Commissions in Overbid Situations. The broker's commission in overbid situations depends upon who is represented by a broker.

1. *Only original bidder represented by broker.* When the original bidder is represented by a broker and the successful overbidder is not, the original broker is allowed a full commission on the amount of the original bid returned.

2. *Where overbidder represented by broker.* The overbidder's broker receives a full commission on the overbid price confirmed by the Court, reduced by one-half (1/2) the commission on the original bid, which latter commission will be split equally between the

original bidder's broker and any listing broker involved in the sale. Overbidder's commission is limited by Probate Code §10162 to half the difference between the successful overbid and the returned bid if the original bidder is not represented by a broker. If the broker's have an agreement regarding the splitting of the commissions, it must be signed by all brokers. Reference to the multiple listing is not sufficient to alter the statutory requirements for the splitting of broker's commissions.

F. Order Must Allocate Commission. The order confirming sale must show the total commissions allowed and any allocation agreed on between brokers.

[Adopted effective 5/1/98; amended 7/1/09]

ACCOUNTS

5.42 IN GENERAL

All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, must be typewritten and must conform to the provisions of the Probate Code. The provisions relating to accounting can be found in Probate Code §§1061 et seq. The account must state the period covered by the account. A personal representative's account must begin with the date of death of the decedent. Financial institution account statements must be provided in accordance with Probate Code §2620(c). Accounts not conforming to the Probate Code will not be approved. When a future accounting is required, the following language shall be included in the last paragraph of the proposed order for approval of an intermediate accounting: "The [First/Second/Third etc.] Account and Report covering the accounting period from <insert applicable date> to <insert applicable date> shall be filed by _____."

[Adopted effective 5/1/98; amended 7/1/08]

5.43 BONDS

In any account where bond has been posted, allegations must be included as to the total bond(s) posted, the fair market value of personal property on hand at the close of the account period plus the estimated annual gross income from the real and personal property, and any additional bond required.

[Adopted effective 5/1/98]

5.44 TRUSTEE'S FIRST ACCOUNT

The starting balance of a testamentary trustee's first account must conform to the trustee's receipt(s) filed on distribution of the assets of the decedent's probate estate. The petition for settlement of a trustee's account must include the names of beneficiaries and remainderpersons and set forth the trust provisions for distribution of principal and income.

[Adopted effective 5/1/98]

5.45 WAIVER OF ACCOUNT

A. By All Interested Parties. Waiver of accounting is permitted when each person entitled to distribution files either a written waiver of accounting or a written acknowledgment that the distributee has already received that to which he/she is entitled. A beneficiary of a specific cash bequest or non-income producing assets ordinarily need not execute a waiver of the accounting.

B. Effect of Waiver. If an account is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report. However, the report must list the information required by law, including information as to creditors' claims, sales, purchases or exchanges of assets, changes in the form of assets, assets on hand, whether the estate is solvent, detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions), costs of administration (if reimbursement of these costs is requested), the amount of any fees or commissions paid or to be paid, and the calculation of such fees or commissions as described in rule 7.705.

C. Waiver by Trustee. A trustee who is also the personal representative may not waive an accounting of himself/herself. The waiver may be executed by a co-trustee or by all trust beneficiaries presently entitled to distribution. This applies to testamentary trusts and to pourover wills into intervivos trusts. A testamentary trustee who waives the accounting of the personal representative must have filed a consent to act as trustee.

[Adopted effective 5/1/98; amended 1/1/04]

DISTRIBUTION OF PROBATE ESTATE

5.46 NOTICE REQUIREMENTS ON PETITIONS FOR DISTRIBUTION

A. Basic Notice Requirements. Unless the Court has ordered that notice be dispensed with, at least 15 days before the time set for the hearing of a petition for partial, preliminary or final distribution, the petitioner shall cause notice of the time and place of hearing to be served on the following:

1. Each non-petitioning personal representative or non-petitioning personal co-representative.

2. The devisees/heirs whose interest in the estate is affected by such petition.

3. The heirs of the decedent in intestate or partially intestate estates.

4. The State of California if any portion of the estate is to escheat to it.

5. The persons who have filed a Request for Special Notice.

6. The persons (or to their attorney, if they have appeared by attorney) who have given notice of appearance in the estate in person or by attorney.

7. If the personal representative is also the trustee, the income beneficiaries of the trust *must* be noticed.

8. In an insolvent estate all creditors having filed creditors' claims must be noticed.

B. Notice to Prior Representative and Attorney. If there has been a change of personal representative or a substitution of counsel, notice of hearing on any petition for distribution must be given to such prior representative and any substituted counsel unless:

1. A waiver of notice is executed by the prior representative or counsel is on file or included with the petition; or

2. An agreement on the allocation of compensation is on file or included with the petition; or

3. The file and petition demonstrate that the commissions the prior personal representative or the fees of the substituted counsel have been previously provided for and allowed by the Court.

C. Proof of Notice. Proof of the giving of notice shall be filed prior to the hearing and, if it appears to the satisfaction of the Court that the notice has been regularly given, the Court will so find in its Order.

D. Additional Notices. Whenever the Court deems that the notice which has been given is insufficient, it may require such further and additional notices to be given as it deems proper.

[Adopted effective 5/1/98]

5.47 PRELIMINARY DISTRIBUTION

A. Preliminary Distribution Under Probate Code §11620. In addition to any other requirements, a petition for preliminary distribution must state the approximate value of the property remaining in the estate after the proposed distribution, an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities, a statement of why final distribution cannot be made and when it will be made. An inventory and appraisal which includes the property to be distributed should be on file.

B. Ex Parte Petition for Preliminary Distribution. Absent an emergency, preliminary distributions should be set for noticed hearing. The Probate Code provides for an ex parte petition for preliminary distribution. The urgency justifying such ex parte application must be set forth.

[Adopted effective 5/1/98]

5.48 FINAL DISTRIBUTION IN GENERAL

A. List of Assets and Description of Property Required. A petition for final distribution, whether or not an account is waived, must list assets on hand and list and describe the property to be distributed, either in the body of the petition, or by a schedule in the accounting, or in a separate exhibit incorporated in the petition by reference. Description by reference to the inventory is insufficient. In the Order for Final Distribution real property must be described by legal description and include the parcel number.

B. Specific Statement How Estate to be Distributed. The petition for final distribution must state specifically how the estate is

to be distributed. A general allegation that distribution is "in accordance with the terms of the Will" or "in accordance with the laws of intestate succession" is insufficient.

C. Non-Prorata Distribution. When the petition seeks a non-prorata distribution, it must show the computation on which the proposed distribution is based. Consents of interested beneficiaries must be filed.

D. Decree of Distribution. Whether or not an accounting has been waived, the decree of distribution must set forth specifically the manner in which the estate is to be distributed by showing the distributee's name and a description of the property, including the legal description of real property, and the amount of cash (as of a date certain) to be distributed. This must be in the body of the decree. Mere reference to allegations in the petition is insufficient and not acceptable to the Court.

1. *Blocked Funds.* The decree should provide that the savings institutions or other depository holding blocked funds belonging to the estate draw checks payable to named distributees. Funds held in blocked accounts in lieu of bond will not be released to the personal representative for distribution.

E. Preliminary Distribution Receipts. Receipts for any preliminary distribution must be on file prior to the final distribution.

[Adopted effective 5/1/98]

5.49 ADDITIONAL REQUIREMENTS RE: PETITION FOR FINAL DISTRIBUTION

A. Allegations Re: Creditor's Claims. In addition to the allegation that all reasonably ascertainable creditors have been notified, the petition for final distribution whether or not on waiver of accounting and whether or not the personal representative is acting under the IAEA, must describe all creditors' claims presented to the personal representative (even if not filed with the Court) and indicate the disposition of each claim. If a claim has been rejected, the date of service of notice of rejection must be stated, as well as its disposition, whether by suit or otherwise. This information must be set forth in the petition for final distribution even though it may have been presented to the Court in whole or in part in prior accountings or petitions for distribution.

B. Allegations Relating to Independent Acts. The petition for final distribution must list and describe all independent acts taken without prior Court approval and must contain an allegation that the notice period for the advice of proposed action was met or waived and that no objections were received. The originals of the advice of proposed action with attached declarations of mailing must be available but need not be filed with the Court.

C. Allegations Re: Character of Property. In all cases where the character of the property may affect distribution, whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property.

D. Community and Quasi Community Property Elections. If a spousal election has been made, the date of the filing of the documents exercising such election and the nature of the election should be set forth in the petition.

E. Change of Ownership. If real property is or was an asset of the estate, any petition for distribution of real property should allege that the change of ownership report was filed with the County Recorder or assessor of each county in which any real property included in the inventory is located.

F. Payment of Taxes. The petition for final distribution must address the question of the source of the payment of the federal estate tax and California estate tax, if any. If the Will has a clause directing the payment of the taxes out of the residue of the estate, this should be alleged. If there is no tax clause or there is a tax clause which does not direct the source of payment, the amounts required to be prorated or charged must be stated. The final account must show the computation and the order of final distribution must show the proration.

G. Retention of a Reserve. The decree of final distribution must specifically set forth the use that may be made of retained funds (e.g. income taxes, closing costs, property tax reassessment, etc.). The petition for final discharge must show the disposition of all amounts held in reserve and vouchers, if requested by the Court, must be filed for any distributions unless account is waived.

H. Franchise Tax Board Clearance. If the estate exceeds $1,000,000 at the date of death and if $250,000 or more is distributable to non-resident beneficiaries, the certificate of the California Franchise Tax Board must be on file. A final account will not be approved until the certificate has been filed.

[Adopted effective 5/1/98; amended 7/1/08]

5.50 AGREEMENTS FOR DISTRIBUTION; ASSIGNMENTS; DISCLAIMERS

A. Agreements. If the distributees agree to distribution in a manner other than that provided by the Will or by the laws of intestate succession, such agreement must be in writing, signed and acknowledged by all parties affected by the distribution, and filed in the probate proceeding.

B. Assignments. The Probate Court will distribute directly to the assignee of an heir or devisee only when a duly acknowledged assignment is on file.

C. Disclaimers. If a disclaimer has been filed, the Petition for Distribution should set forth the date of filing, the person disclaiming, the property of the estate affected and the person or persons entitled to receive distribution of the property disclaimed.

[Adopted effective 5/1/98]

5.51 DISTRIBUTION TO PERSONS UNDER CONSERVATORSHIP OR GUARDIANSHIP

The decree should provide for distribution of the property to the minor or the conservatee rather than to the guardian or conservator, but must provide that actual payment or delivery be made to the guardian or conservator.

[Adopted effective 5/1/98]

5.52 DISTRIBUTION TO MINORS

A. Delivery to Parent. Where delivery of the assets is to be made to the minor's parent, the declaration by the parent complying with the provisions of Probate Code §3401 must be on file before the hearing date.

B. Depository. Where a depository is to be used, the receipt and agreement of the depository must be filed as required under Probate Code §2328 and the decree of distribution shall so provide. The decree shall direct distribution of the minor's funds to a specific depository, including its location, in the name of the minor and shall state that the funds cannot be withdrawn without Court order.

[Adopted effective 5/1/98]

5.53 DISTRIBUTIONS TO TRUSTEES

If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. A written declination should be filed by or on behalf of the trustee who does not choose to act. The decree must contain the terms of the testamentary trust.

[Adopted effective 5/1/98]

5.54 DISTRIBUTION TO REPRESENTATIVE OF DECEASED HEIR OR BENEFICIARY

When a beneficiary dies during the administration of an estate and survives any survival period stated in the Will, the decree should provide for distribution to the named personal representative of the estate of the beneficiary or where applicable, to the person(s) entitled thereto under Probate Code §13100. Counsel must file a certified copy of Letters Testamentary or the original affidavit required by Probate Code §13101 before the hearing date.

[Adopted effective 5/1/98]

5.55 DISTRIBUTION TO INTESTATE HEIRS

Heirs who take by virtue of intestacy must be sufficiently described to permit the Court to determine if the laws of intestate succession have been properly applied. If an heir takes by right of representation, the Petition must indicate his parentage, and the approximate date of the parent's death.

[Adopted effective 5/1/98]

5.56 DISTRIBUTION TO "MISSING" HEIR

When distribution is to be made to the State of California because there are no known heirs or there is an heir or devisee whose whereabouts is unknown, the notification requirements of the Probate Code must be followed. In addition, alternative distributees must be set forth. (Prob C §11603(c).)

[Adopted effective 5/1/98; amended 1/1/04]

5.57 INTEREST ON GENERAL PECUNIARY LEGACIES

The Court will strictly enforce the policy regarding interest on general pecuniary legacies set forth in the Probate Code and will order payment of interest at the statutory rate on all general pecuniary bequests not paid within one year from the date of decedent's death unless payment of interest is waived in the Will.

[Adopted effective 5/1/98]

MISCELLANEOUS PETITIONS AND ORDERS

5.58 FAMILY ALLOWANCE

A. Necessary Allegations of Petition. All petitions for family allowance must show that the allowance is necessary and reasonable, including:

1. The nature and separate and community character of the probate estate and whether or not it is solvent;

2. Whether others are entitled to family allowance;

3. The approximate needs of the applicant, with reference to his or her standard of living; and

4. The applicant's income from other sources.

5. The petitioner shall file an income and expense declaration prior to the hearing. (Judicial Council Form FL-150.)

B. Duration of Family Allowance. All orders will limit family allowance to a definite period of time. If the order is on an ex parte petition, family allowance will normally not be granted for a period exceeding six months.

C. Before Inventory Filed. Before an inventory is filed an order for a family allowance may be made or modified ex parte or on noticed hearing.

D. After Inventory Filed. After an inventory has been filed an order for a family allowance may be made or modified only on noticed hearing.

[Adopted effective 5/1/98; amended 7/1/08]

5.59 STATUS REPORTS

The statutory requirements for filing of status reports annually in lieu of accountings is taken seriously by the Court. Attorneys failing to comply with the statutory requirements may expect to have their statutory compensation reduced. All status reports must explain why the case has not been closed and when the attorney expects to file a petition for final distribution. The Order must require the filing of an additional status report on or before the date fixed for the Petition for Final Distribution if the petition is not to be filed by that date.

[Adopted effective 5/1/98]

5.60 OBTAINING FINAL DISCHARGE

A Declaration and Order for Final Discharge shall include a copy of the Judgment for Final Distribution and a receipt or other satisfactory evidence from each distributee. The Court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt that the property has been delivered to or is in the possession of the distributee. In the case of real property, the personal representative shall file a statement that identifies the date and place or location of the recording of the judgment of final distribution or other appropriate recording information. If funds have been retained as a reserve, the application for final discharge shall contain the disposition of all funds and all receipts. The Court in its discretion may require a supplemental account for the reserve.

[Adopted effective 5/1/98; amended 1/1/06]

5.61 PROCEEDINGS TO ESTABLISH FACT OF DEATH

A. Filing Under Decedent's Name. A petition to establish the fact of death must be filed in the name of the deceased person whose interest is to be terminated.

B. Separate Petition Preferred. Although the Probate Code authorizes a petition to establish the fact of death to be included in a verified petition for probate of Will or for Letters of Administration for convenience of administration, attorneys are encouraged to file a separate petition.

C. Property Description. If real property is affected, a copy of the document showing the decedent's interest must be attached to the petition and incorporated therein, or the verified petition must set forth the entire instrument vesting title, including the recordation data. If personal property is affected, the location and description of the property and the decedent's interest therein must be set forth with particularity.

D. Death Certificate. A certified copy of the death certificate shall be filed with the petition.

E. Attorneys' Fees. There is no provision in the Probate Code for allowance of set attorneys' fees in proceedings to establish the fact of death and the Court will not fix such fees. The attorney should make fee arrangements directly with the client. However, if a surviving joint tenant failed during his or her lifetime to establish the fact of death of a previously deceased joint tenant, compensation for extraordinary services may be awarded in the probate proceeding involving the surviving joint tenant for those services performed after the death of the surviving joint tenant.

[Adopted effective 5/1/98]

5.62 PETITION TO ESTABLISH IDENTITY OF HEIRS

A Petition to Establish Identity of Heirs may be filed when title to real or personal property vests in heirs, heirs of the body, issue, or children of the decedent without other specific identification. Like the proceeding to establish death, only the fact of identity is determined and the resulting judgment does not determine the legal right to the property involved.

[Adopted effective 5/1/98]

5.63 TRANSFER OF ESTATE PLANNING DOCUMENTS TO CLERK

Only estate planning documents held by an attorney for safekeeping may be transferred to the Clerk of the Court under Probate Code §732. See Appendix C for Guidelines and the form to be presented to the Clerk.

[Adopted effective 5/1/98]

5.64 REFUND OF GRADUATED PROBATE FILING FEES

The personal representative of a decedent's estate commenced between August 18, 2003 and January 1, 2008 may apply to the Court for a refund of the amount of the filing fees paid in excess of the filing fees that would have been payable on the original filing date for a Petition for Probate of an estate valued at less than $250,000. The procedure below applies to Petitions for Probate that are either granted or voluntarily dismissed.

To apply for a refund, the personal representative shall file a declaration with the Court stating that the original amount of the filing fee exceeded the amount of the filing fee, as specified in CRC 7.552, and requesting a refund of the excess amount of the filing fee. The Court will confirm the original amount of the filing fee and will calculate the amount, if any, of the refund. The request for refund will be forwarded to the Court's Accounting Unit for processing and it will be remitted to the personal representative within thirty (30) calendar days.

[Adopted effective 1/1/10]

GUARDIANSHIPS AND CONSERVATORSHIPS

5.65 TEMPORARY GUARDIANSHIPS AND CONSERVATORSHIPS

A. Good Cause Required. A temporary guardianship or conservatorship will not be granted without a showing of good cause. The petition should set forth facts showing the emergency or urgent nature of the request.

B. Presenting Petition. The petition for temporary guardianship or conservatorship must be filed in the Clerk's Office (Room 113). A hearing for the appointment of temporary *conservator* will be set by the Court Investigator. A hearing for the appointment of a temporary *guardian* will be set by the Probate Examiner. Judicial Council form GC-330 (Order Appointing Court Investigator) must accompany the petition. A copy of the petition, all supporting documents, and the Probate Contact Information Form (Local Form PRO15) must be provided immediately to the Court Investigator so the report required by Probate Code §2250.6 can be prepared prior to the hearing.

C. Bond. A full bond will normally be imposed upon a non-corporate temporary guardian or conservator of the estate; if a lesser amount is requested, good cause must be shown in the petition. The Court may in certain cases require a bond of a temporary conservator or guardian of the person.

D. Notice. Notice must be given to the persons listed in Probate Code §§1510, 1511, 1821 and 1822. If the petition requests that notice be dispensed with to any persons required to receive notice, the Judicial Council Form GC-112 must be filed with the petition for appointment of a temporary conservator. The fact that a proposed conservatee may not understand the proceeding or be unable to attend is not a reason for dispensing with notice.

E. Powers of Temporary Guardians and Conservators. Temporary guardians or conservators have the same powers as permanent guardians or conservators with the following exceptions:

1. *Sales.* Temporary guardians or conservators may not sell any property including securities, vehicles, personal property, or real property.

2. *Change Of Residence Under a Temporary Conservatorship.*

a. *Hearing.* The court is required to hold a hearing within seven days after a petition is filed. (Prob. C. §2253(c).) The proposed conservatee is required to attend the hearing unless he/she is unable or unwilling to attend the hearing and does not object. The proposed conservatee has the right to legal counsel, the right to confront any witnesses presented by or on behalf of the temporary conservator, and to present evidence on his/her own behalf. The court, in granting the petition, must make a finding that the change of residence is required to prevent irreparable harm and that no means less restrictive of the proposed conservatee's liberty will be sufficient to prevent such harm.

b. *Order.* The order shall specify the specific place where the placement is authorized. The court may not authorize removal from the state without an additional showing of necessity. A conservator who "willfully" removes a temporary conservatee from the state without a court order is guilty of a felony. (Prob. C. §2253(g).)

c. *Investigation by Court Investigator.* If directed by the court, the Court Investigator does the following: (i) personally interview the proposed conservatee; (ii) inform the proposed conservatee about the proceedings and his/her rights; (iii) determine if the proposed conservatee objects, wishes to exercise his/her legal rights, is able and willing to attend the hearing, if legal counsel should be appointed, and whether the change of residence is required to prevent irreparable harm and no less restrictive means will suffice to prevent harm. The Court Investigator's report must be filed at least two days before the hearing. The contents of the report must mirror the determinations above. (See Prob. C. §2253(b)(8).)

F. Special Powers. Good cause must be shown for special powers to be granted without a hearing. If special powers or other special orders are sought, they must be specified in the petition and supported by factual allegations. Specific written explanations must be submitted for each power requested under Probate Code §2590. In any case involving a special medically related power, a physician's declaration should be presented with the petition. Except in cases of emergency, no power of sale of real property will be granted without a noticed hearing.

G. Length of Appointment. A temporary conservator will be appointed only pending the hearing on the petition for appointment of the conservator.

[Adopted effective 5/1/98; amended 7/1/09]

5.66 GUARDIANSHIPS

A. Notice of Petition for Appointment of Guardian. Notice of petition must comply with Probate Code §§1510-1511. Note that these sections require *personal service* on specified persons. In situations where an order dispensing with notice is sought on the ground that a relative within the second degree cannot be found with reasonable diligence and no other notice is required, the Court requires a declaration stating specifically what efforts were made to locate the relative.

B. Proposed Ward's Appearance at Hearing for Appointment of Guardian. The requirement of an appearance is within the discretion of the Court and will be decided on an individual case basis. Where the proposed ward is the natural child of the proposed guardian of the estate, an appearance by the proposed ward is not required.

C. Investigative Reports. Unless waived by the Court, an investigative report must be given to the Court prior to appointment of a guardian of the person and/or estate.

1. *Non-Relative Petitioner.* In all cases where a non-relative petitions to be appointed guardian, the Department of Social Services will perform an investigation and make a report to the Court prior to the hearing date.

2. *Relative Petitioner.* When the proposed guardian is a relative, the court investigator will interview all parties at the time of the hearing and report to the Court.

D. Required Documents. The following documents must be filed with the petition:

1. *Guardian Information Form.* The Court requires that a Guardianship Information Form (see Appendix D) in support of the petition for guardianship of the person be filed with the petition by the proposed guardian. The Guardianship Information Form will become part of the confidential court file. A copy should be provided to the Court Investigator within 5 days after filing the Petition for Appointment of Guardian. The declaration shall include the following:

a. The need for guardianship including the specific reasons why the parents are unable to care for the proposed ward, and whether they consent to the guardianship.

b. A statement concerning the development of the minor, indicating with whom the minor has resided since birth, and any special emotional, psychological, educational or physical needs of the minor and the guardian's ability to provide for such needs.

c. Any arrest record of the guardian and each person who will reside in the guardian's home, including the nature of the offense, the date, place and disposition.

d. Any pending or prior proceedings in Juvenile Court involving the minor or any other persons who will be residing in the guardian's home including the date, place, and disposition.

e. Any prior contact by the minor, the guardian, and any persons who will reside in the guardian's home with Child Protective Services of the Department of Social Services.

f. A statement regarding the necessity for a visitation order. Any information regarding visitation orders which are currently in effect and any information concerning visitation issues between any of the parties. If visitation is an issue, a statement as to how often the parents visit.

2. *Declaration Under UCCJEA.* A declaration under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) shall be filed with the petition and at any time there is a change of address of the ward.

3. *Confidential Guardian Screening* (Judicial Council Form GC-212).

4. *Duties of Guardian and Viewing of Videotape*. Before Letters of Guardianship are issued, each guardian of the person or estate must sign and file the Duties of Guardian form (Judicial Council Form GC-248). The guardian must also view the guardianship videotape shown in Room 116 and file the Acknowledgement of Guardian's Viewing of Videotape (Local Form FL026).

E. Appointment of CASA. In guardianships of the person the Court will appoint a CASA representative to review the guardianship.

F. Inventory and Appraisal. At the hearing to appoint a guardian of the estate, a compliance hearing will be set in approximately 120 days to ensure the Inventory and Appraisal (I&A) has been filed as required by law. If the I&A has been filed, bond is sufficient, receipts for blocked accounts have been filed, and the notice required by law has been provided, the hearing will be dropped. If the requirements of this rule and the law have not been met, an appearance by the attorney and the fiduciary will be required.

G. Accounts and Reports. The report accompanying each accounting should contain a statement of the age, health and whereabouts of the ward. In addition, the report should contain an allegation concerning the amount of bond currently in effect and should address the question of the adequacy thereof.

1. *Conflicts of Interest.* The report accompanying an account shall include a disclosure of any actual or potential conflicts of interest as required by law. If no disclosures are required, the guardian shall include an allegation that no disclosures are required pursuant to Probate Code §§ 2111.5, 2351(d), 2401(c), and 2403(c)(2).

2. *Waivers Of Accounts.* Waivers of interim accounts will not be accepted. Waivers of final accounts on termination are not favored and the Court may require the ward to be present at the hearing.

H. Guardianship Status Report. A confidential guardianship status report is due annually on the Judicial Council form.

I. Discharges. Discharge of the guardian will not be made in the order settling final account. A separate declaration for final discharge must be submitted, together with the receipt executed by the former ward and a copy of the order settling the final account and ordering delivery of the assets to the former ward. The declaration must state the date on which the ward reached

majority.

J. Copies. All filings regarding guardianships must be accompanied by a copy designated for the Court Investigator.

K. Current Address. All attorneys and guardians are required to keep the Court informed of their current addresses and phone numbers as well as the current address and phone number of the ward.

L. Use of Minor's Assets for Support. In guardianship cases, if a minor has a living parent who receives or is entitled to support for the minor from another source, prior Court approval must be obtained before using guardianship assets for the minor's support, maintenance or education. The petition must set forth the parents' financial inability or other circumstances which would justify use of the guardianship assets. Such petition may be included in a petition for the appointment of a guardian. An order granting the petition should normally be for a limited period of time, usually not to exceed 6 months, or for a specific and limited purpose.

1. *Funds In Blocked Accounts.* A request for withdrawal of amounts necessary for the minor's support may normally be made ex parte if accompanied by a sufficient showing of the need. However, where the minor has a living parent, the petition must contain the allegations referred to above; in such cases the Court may require the obtaining of an order prescribing notice and a calendared hearing.

[Adopted effective 5/1/98; amended 7/1/09]

5.67 ORDERS FOR WITHDRAWALS OF FUNDS IN BLOCKED ACCOUNTS

Withdrawals are handled informally by the Court upon ex parte petition by the guardian. Normally an attorney need not be involved. Where withdrawal is sought because the minor has reached majority, the order establishing the blocked account is not self-executing, a certified copy of the minor's birth certificate or other convincing evidence of the minor's age must be presented with the petition for withdrawal. The order must provide for the payment of the funds only to the former minor. Where withdrawal is sought prior to majority, the purpose of the withdrawal must be fully disclosed. Withdrawals are disfavored except in cases of medical emergencies or unusual needs which a parent is unable to meet.

In the case of guardianship estates consisting solely of blocked accounts established after settlement of litigation, orders establishing such accounts should provide for direct payment to the minor upon reaching the age of majority. Withdrawals prior to that time may be made by the guardian without assistance of counsel. Withdrawals may be sought by completing forms of petitions and orders provided by the Clerk. The purpose of the withdrawals must be disclosed in full to the Court. Withdrawals are disfavored by the Court except in the case of medical emergencies and unusual needs when parents cannot afford to pay.

[Adopted effective 5/1/98; amended 1/1/10]

5.68 DISPOSITION OF MINOR'S FUNDS (PROBATE CODE §3410)

A. Contents of Petition. A petition under these sections must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement of the reasons that the requested relief will best serve the interests of the minor.

B. Notice. The petition may be presented ex parte if the only relief sought other than reimbursement for filing fee and award of reasonable attorneys' fees is to deposit funds in a blocked account and the amount involved does not exceed $20,000.00. Otherwise, the petition must be noticed.

C. Order. Where the minor's funds are to be deposited in a blocked account, the order must provide that the person holding funds shall disburse the ordered amount of fees and costs, if any, directly to the person(s) entitled thereto and disburse the balance to the selected depository, whose name and address must be specified. The order must also provide that the receipt by the depository of the funds and a copy of the order must be filed forthwith upon the deposit of the funds. The receipt must acknowledge that the funds may be withdrawn only on Court order.

[Adopted effective 5/1/98]

5.69 CONSERVATORSHIPS

A. Special Requirements. In all conservatorship proceedings:

1. *Judicial Council Forms.* Adopted forms must be used and approved forms may be used.

2. *Copies.* An extra copy of all conservatorship filings must be given to the Clerk of the Court designated for the Court

Investigator.

3. *Change Of Address.* Whenever the address of the conservatee is changed, the conservator must file a Pre-Move Notice of Change of Residence (Judicial Council Form GC-079) or a Post-Move Notice of Change of Residence (Judicial Council Form GC-080) within the timeframe required by law. Any changes to the address or phone number of the conservator or attorney must be promptly filed with the Court. Copies of all changes of address or telephone number must be provided to the Court Investigator.

B. Appointment of Conservator.

1. *Order Appointing Court Investigator.* An order appointing Court investigator must be signed and filed with the petition for appointment of conservator.

2. *Confidential Supplemental Information.* All petitions for conservatorship must be accompanied by the Judicial Council form Confidential Supplemental Information.

3. *Confidential Conservator Screening* (Judicial Council Form GC-312).

4. *Handbook For Conservators and Viewing Of Videotape.* Before Letters of Conservatorship are issued, each conservator of the person or estate must: (a) obtain and file the Duties of Conservator indicating receipt of the Handbook for Conservators, and (b) view the conservatorship video shown at 8:30 a.m. Monday mornings in Room 116 and file the form entitled "Acknowledgment of Conservator's Viewing of Videotape."

C. Additional Powers of Conservator. The Court may, on the petition of the conservator either at the time of appointment or later, grant additional powers to the conservator as authorized by the Probate Code. The Court does not favor the granting of Special Powers absent a showing of good cause. Any additional powers will be tailored to the specific circumstances of each case. Ordinarily, the Court will not grant the power to sell real property.

D. No Attorneys' Fees in Order Appointing Conservator. The Court does not grant attorney fees in the Order Appointing Conservator.

E. Doctor's Declaration. A doctor's declaration on the Judicial Council Form is required stating not only that the proposed conservatee suffers from a deficit, but how that deficit prevents the proposed conservatee from functioning.

F. Professional Conservators. When seeking appointment, private *professional* conservators must include a statement that he/she is licensed under the Professional Fiduciaries Act of the Business and Professions Code, along with the license number and expiration date. All professional fiduciaries who are exempt from the definition of professional fiduciary under Business and Professions Code §6501, or who are exempt from the licensing requirement of §6530, must provide information about his/her exemption.

G. Limited Conservatorships. Counsel or the self-represented petitioner should prepare an order appointing the Public Defender as counsel for the proposed conservatee. Counsel or the self-represented petitioner should prepare an order directing the Golden Gate Regional Center to prepare a report on the powers requested by the proposed limited conservator.

H. Petition for Substituted Judgment. Prior Court approval is required for any action specified in Probate Code §2580, et seq. The petition must comply with the requirements of Probate Code §2583. If the petition requests authorization to establish a trust, the trust document must comply with the requirements of CRC 7.903. Ordinarily if the conservatee is unrepresented the Court will appoint counsel for the conservatee as Guardian Ad Litem from its Probate Panel for the limited purpose of reviewing the petition and representing the interests of the conservatee.

[Adopted effective 5/1/98; amended 7/1/09]

5.70 NOTICE IN CONSERVATORSHIP PROCEEDINGS

Unless dispensed for good cause, notice of the hearing and a copy of the petition must be served on the conservatee as well as any attorney for the conservatee in all conservatorship proceedings. Notice of hearing shall be given in accordance with the Probate Code.

A. On Petition for Appointment of Conservator. There is no statutory basis for shortening the time of notice or for dispensing with notice on a petition for the appointment of a conservator.

B. Power of Attorney. If the proposed conservatee has executed a power of attorney, the attorney-in-fact should receive notice of the petition for conservatorship. This information should also be included in the petition for conservatorship.

C. On Final Accounts. On final accounts where the conservatorship has been terminated by death of the conservatee, the Court will usually require that notice of the hearing on the settlement of the final account be given to the personal representative of the probate estate, if one has been appointed or if none, to the personal representative named in the conservatee's will, or if none, to any beneficiary of the conservatee so far as is known to the conservator. If the personal representative is the same as the conservator, the devisees and heirs must be notified. On final accounts where the conservatee is living, the conservatee must be served. In such cases, the proof of notice must clearly indicate that the conservatee received a copy of the notice and the petition.

D. Exclusive Broker Listings. A petition for authorization to grant an exclusive listing will be considered *ex parte,* but *only after prior authority to sell has been obtained on a noticed petition.* The petitions may be combined as a noticed petition. *All conservatorship sales will be subject to Court confirmation notwithstanding Probate Code provisions to the contrary.* It is not the policy of the Court to grant a conservator special power of sale of real property in conservatorships. However if granted, the conservator must notify the Court if the personal residence is to be sold and that the sale has been discussed with the conservatee.

[Adopted effective 5/1/98]

5.71 MEDICAL AUTHORIZATION FOR CONSERVATORS

A. Medical Consent Authority. All conservators of the person have the power to consent to medical treatment of the conservatee so long as the conservatee does not object. In emergencies, the conservator may require the conservatee to receive medical treatment even though the conservatee does not consent. (Prob C §2354)

B. Exclusive Medical Consent Authority. If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment pursuant to the Probate Code, the conservator has the exclusive authority to give such consent and may give such consent over the objection of the conservatee. The Court does not favor the granting of such exclusive authority and absent the express agreement of the conservatee will require a showing in accordance with Probate Code §812 that the conservatee lacks the capacity to give informed consent to any medical treatment. Such authority will only be granted if the following conditions are satisfied:

1. *Court Investigator Report.* It clearly appears from the Court file that a Court Investigator has advised the conservatee of the effect of granting such authority and of the conservatee's rights in regard to such request.

2. *Physician's Declaration.* A physician's declaration on the Judicial Council Form is filed stating a medial opinion that the proposed conservatee lacks the capacity to give informed consent to any medical treatment and that the proposed conservator should be granted the exclusive authority to give such consent and to consent over the objection of the proposed conservatee. Such declaration must state the factual basis for the opinion and the nature and extent of the physician's examination and investigation. Such declaration must also conform to the requirements of Probate Code §812.

3. *Conservatee Regains Capacity.* If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition pursuant to the Probate Code to revoke any previous order granting the conservator exclusive authority to consent to medical treatment.

[Adopted effective 5/1/98; amended 1/1/06]

5.72 ACCOUNTS AND REPORTS IN CONSERVATORSHIP PROCEEDINGS

In addition to the requirements set forth in the Probate Code, counsel are reminded and further advised of the following:

A. Inventory and Appraisal. The Inventory and Appraisal (I&A) is due 90 days from appointment. At the hearing to appoint a conservator of the estate, a compliance hearing will be set in approximately 120 days to ensure the I&A has been filed as required by law. If the I&A has been filed, bond is sufficient, and the notice required by law has been provided, the hearing will be dropped. If the requirements of this rule and the law have not been met, an appearance by the attorney and the fiduciary will be required.

B. Account and Report. The report accompanying an account shall include a disclosure of any actual or potential conflicts of interest as required by law. If no disclosures are required, the conservator shall include an allegation that no disclosures are required pursuant to Probate Code §§ 2111.5, 2351(d), 2359(c)(2), and 2403(c)(2).

C. Waivers of Account. Waivers of Account will be accepted in the Court's discretion only in the following instances:

1. When the proceeding is terminated by Court order, and the conservatee thereafter waives an account;

2. When the proceeding is terminated by death of the conservatee and (a) there is no Will and a written waiver is obtained from

all of the conservatee's heirs, or (b) there is a Will and a written waiver is obtained from the personal representative and the beneficiaries under the Will after the order admitting the Will has become final. Waivers will be accepted only from heirs or beneficiaries who are competent adults.

D. Assessment Fees of Court Investigator. The fees of the court investigator must be paid before the accounting will be approved. A receipt for the fees should be on file. If the conservator believes these fees should be deferred, the conservator shall file a petition requesting deferral of fees and serve a copy of the petition on the investigator.

[Adopted effective 5/1/98; amended 7/1/08]

5.73 SALE OF RESIDENCE BY CONSERVATOR

If the conservator petitions to sell the conservatee's residence, the petition must allege that the conservatee is unable to return to the residence or, if able, that the conservatee agrees to the sale, or that the sale is necessary to generate cash to support the conservatee. The petition shall include the information that the sale has been discussed with the conservatee pursuant to the Probate Code. The report shall include the responses of the conservatee. Where the sale of the conservatee's residence is sought, a copy of the petition must be provided to the Court Investigator at the time of filing the petition.

[Adopted effective 5/1/98]

5.74 TERMINATION OF CONSERVATOR

A. Resignation of Conservator. Conservators who wish to resign must formally propose a competent successor and file a final accounting, subject to Court approval.

B. Petitions for Appointment of Successor Conservator. Petitions for appointment of successor conservators must be accompanied by a Notification to Court of Address of Conservatee and Conservator and a Confidential Supplemental Information Form.

C. Distribution of Assets. The order distributing assets must contain the name of the successor conservator, or, in the event the conservatee is deceased, the name of the personal representative and a list of the assets.

[Adopted effective 5/1/98]

5.75 COURT APPOINTED ATTORNEYS FOR (PROPOSED) CONSERVATEE

If necessary, the Court will appoint an attorney to represent a (proposed) conservatee. Attorneys who wish to be considered for appointment may write a letter to the Probate Commissioner outlining experience and interests that are related to Probate Conservatorship law. Compensation for court appointed attorneys is set by the Probate Court. Compensation will be paid from the estate of the conservatee. If there is no estate or the estate qualifies as a small estate under Probate Code §2628 then compensation will be paid by the Court.

Upon appointment, attorneys will be furnished with a Court Order. Court appointed attorneys are expected to do the following:

1. *Court Investigator.* Remain in close communication with the Court Investigator.

2. *Personal Visit.* Personally visit the person they have been appointed to represent and to interview other individuals as the case may merit.

3. *Representation As To Conservatorship Only.* Represent the (proposed) conservatee only on the issue of conservatorship. Other legal work, such as wills, real estate transactions, estate transactions, estate planning, tenant disputes, must be approved separately by the Court.

4. *Keep Court Informed.* Inform the Court of the wishes, desires, concerns, and objections, of the (proposed) conservatee as well as provide the Court with an independent assessment of the situation.

5. *Disclose Potential Conflicts of Interest.* If the court appointed attorney requests an independent professional fiduciary be appointed, court appointed counsel must disclose if he or she currently represents that professional fiduciary in any other proceeding. This disclosure must be in the form of a declaration filed with the Court. A copy of the declaration must be mailed to persons entitled to notice of the proceedings.

6. *Discharge.* Court appointed attorneys are expected to request discharge from the case at a time deemed appropriate by them and the Probate Court. At that time, the court appointed attorney will petition for discharge and for compensation. A declaration

as to the nature and hours of work performed must be included with any petition for compensation. A Court appearance may not be necessary if all parties agree that discharge is appropriate. The matter may be handled ex parte with notice to the conservator and, if conservatee is not deceased, to the conservatee.

[Adopted effective 5/1/98; amended 7/1/09]

TRUSTS

5.76 FILING OF ACTIONS CONCERNING TRUSTS

Generally, an action between a trustee and a trust beneficiary should be filed in the Probate Court.

A. Filed in Probate Court. In the following instances an action concerning a trust should be filed and placed on the probate calendar:

1. Petition is filed in an existing probate action;

2. Petition cites the Probate Code as cause of action;

3. Petition involves creditors' claims against the trust or involves the construction of trust or other internal matters of the trust.

B. Filed as a Civil Action. In the following instances an action concerning a trust should be filed as a civil action.

1. Complaint is in an existing civil action;

2. Complaint cites a code other than the Probate Code.

[Adopted effective 5/1/98]

5.77 NOTICE REQUIREMENTS CONCERNING TRUSTS

A. Notice Generally. Trust matters brought under sections of the Probate Code applicable to trust (Prob C §§15000-19403) require thirty (30) days notice.

B. Notice to Trust Beneficiaries. If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust and the representative is either named to act or is acting as the sole trustee, then the Court will require notice to beneficiaries as required by Probate Code §1208. In appropriate circumstances the Court may require the appointment of and notice to the guardian ad litem for potential beneficiaries if their interest may diverge significantly from those of the beneficiaries in being. This notice requirement applies to both testamentary trusts and pourover wills to an intervivos trust. The Court requires that a copy of the trust document be lodged with the Court to verify the persons requiring notice or a declaration by the attorney be filed stating the trust beneficiaries entitled to notice. On termination of a conservatorship if the conservator and the personal representative or trustee are the same person, notice should be given to the trust beneficiaries.

[Adopted effective 5/1/98]

5.78 WAIVER OF ACCOUNT BY TRUSTEE

A trustee who is also the personal representative may not waive an accounting of himself/herself. The waiver may be executed by a co-trustee or by all trust beneficiaries presently entitled to distribution. This applies to testamentary trusts and to pourover wills to intervivos trusts. A testamentary trustee who waives the accounting of the personal representative must have filed a consent to act as trustee. Even though there is a waiver of accounting by the trustee, if the net probate income is to be paid over by the trustee to trust beneficiaries, the net probate income must be specified.

[Adopted effective 5/1/98]

5.79 TRUSTEE'S FIRST ACCOUNT

The starting balance of a testamentary trustee's first account must conform to the trustee's receipt(s) filed on distribution of the assets of the decedent's probate estate. The petition for settlement of a trustee's account must include the names of beneficiaries and remainderpersons and set forth the trust provisions for distribution of principal and income.

[Adopted effective 5/1/98]

5.80 DISTRIBUTIONS TO TRUSTEE

If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. A written declination should be filed by or on behalf of the trustee who does not choose to act. The decree must contain the terms of the testamentary trust.

[Adopted effective 5/1/98]

5.81 SUBSTITUTED JUDGMENT

If a trust is established pursuant to the substituted judgment statutes for a conservatee, the Court will require bi-annual accountings of all trust assets and the trust shall remain under the jurisdiction of the Probate Court.

[Adopted effective 5/1/98]

COMPENSATION

5.82 STATUTORY COMPENSATION IN DECEDENT'S ESTATE

A. Calculation Must be Shown. All petitions requesting payment of statutory compensation — even if accompanied by a waiver of accounting — must show the calculation of the compensation requested in accordance with Cal Rules of Ct 7.705(a).

B. Basis for Computing Statutory Compensation on Waiver of Accounting. As an alternative to basing statutory compensation on the inventory values alone, where the petition for final distribution so requests, the Court will allow such compensation to be based on the inventory values plus income, plus gains on sales, less losses on sales, provided these figures are set forth clearly in the verified petition in accordance with Cal Rules of Ct 7.705(b).

[Adopted effective 5/1/98; amended 1/1/04]

5.83 EXTRAORDINARY COMPENSATION IN DECEDENT'S ESTATES

A. Factors. The following factors will guide the attorney and the Court in determining whether and in what amount attorneys' compensation for extraordinary services will be awarded:

1. The time required for the services.

2. Results obtained.

3. Benefits accruing to the estate and to beneficiaries.

4. Nature of services performed by personal representatives.

5. Amount of statutory compensation.

B. Declaration. Requests for extraordinary attorneys' compensation must contain detailed descriptions of the work performed, the hours spent on the work performed, the average hourly rate requested, the total amount requested and special circumstances related to the request. The declaration should include a statement which sets forth the number of hours spent on ordinary services and the total dollar value of services performed for statutory services.

C. Paralegal Services. Extraordinary attorney's services may include services of a paralegal acting under the direction and supervision of an attorney. The petition must set forth the hours spent, the qualifications of the paralegal, the work performed and the hourly rate. In addition, the petition should provide the court with assurance that the amount requested for extraordinary services of the attorney and paralegal combined do not exceed the amount appropriate if the attorney provided the services without the paralegal's assistance.

D. Examples of Services. Compensation may be awarded for extraordinary services, including but not limited to the following:

1. Sales, leases, exchanges, financing or foreclosure of real or personal property.

2. Contested or litigated claims against the estate.

3. Preparation of income, sales, withholding, gift or estate tax returns and handling of audits or litigation connected with tax liabilities.

4. Carrying on the decedent's business.

5. Will contest.

E. Litigation Connected with Estate. Extraordinary compensation for representing the estate in litigation outside the regular administration of the estate whether by the attorney for the representative or outside counsel should be requested in advance and will ordinarily be allowed upon a properly noticed petition estimating the cost of litigation. Upon proper showing the Court may authorize progress payments prior to completion.

[Adopted effective 5/1/98]

5.84 PARTIAL ALLOWANCE OF COMPENSATION

A. Statutory Compensation. Partial allowance of statutory compensation will not be allowed on account before the filing of an inventory or the time for creditors' claims has run. Such allowance will be made in accordance with the work actually performed, but where no accounting is filed, the allowance may not exceed 50% of the statutory compensation computed upon the total value appearing in the inventories filed to that time. Where an accounting is filed, the allowance may not exceed 75% of the statutory compensation so computed.

B. Apportionment. Except in a case in which there is an agreement in writing on apportionment, where the personal representative has been represented by successive attorneys, compensation will not ordinarily be apportioned to a prior attorney for the personal representative until the final accounting has been approved.

C. Extraordinary Compensation. Extraordinary compensation will be allowed before final distribution only when it appears likely that the estate will remain in probate for an unusually long time, whether due to litigation or other cause, or on a showing that present payment will benefit the beneficiaries of the estate.

[Adopted effective 5/1/98]

5.85 COMPENSATION FOR TRUSTEES, GUARDIANS, CONSERVATORS AND THEIR ATTORNEYS

A. Criteria. *Estate of Nazro* (1971) 15 Cal.App.3d 218 [93 Cal.Rptr. 116], states the following applicable criteria:

1. The gross income of the estate.

2. The success or failure of the administration of the fiduciary.

3. Any unusual skill or experience that the fiduciary in question may have brought to the work.

4. The fidelity or disloyalty displayed by the fiduciary.

5. The amount of risk and responsibility assumed.

6. The time spent by the fiduciary in carrying out fiduciary duties.

7. The custom in the community as to allowance to fiduciaries by settlors or Courts, and as to charges of corporate fiduciaries.

8. The character of the work performed, i.e., whether routine or involving skill and judgment.

9. The fiduciary's estimate of the value of the services.

B. Compensation to Conservators/Guardians of the Person. Compensation for guardians and conservators of the person will be awarded on the basis of the amount and quality of the services rendered, actual time expended and hourly rate. A declaration should accompany all requests for compensation.

C. Compensation to Conservators/Guardians/Trustees of the Estate.

1. *Corporate Trustee or Corporate Conservator - Percentage Guideline.* Where a corporate trustee or corporate conservator is actively managing an income producing trust, a reasonable fee should usually not exceed 8/10ths of 1% of the principal of the trust per annum at the estimated fair market value at the close of the accounting period. When all or a portion of the income-producing trust is actively managed real property, a fee of 1% of that portion of the fair market value of the corpus attributable to the real property will normally be considered reasonable. [Corporate trustee or corporate conservator includes **only** banks and financial institutions. All professional conservators and other trustees or conservators must request fees under paragraph 2 below.]

2. *Noncorporate Trustee or Conservator - Percentage Guidelines Normally Inapplicable.* The noncorporate or individual trustee or

conservator shall ordinarily be compensated on a quantum meruit basis according to work actually performed under the principles described above. The noncorporate trustee or conservator must submit an itemized fee declaration. (See paragraph E below.) If the compensation requested is at or above the level of a corporate trustee or conservator, it shall be the burden of the applicant to demonstrate the facts for justification; and in justifying guideline computations, the applicant shall include the cost of services of professional assistants including accountants, investment counselors, property managers and others.

D. Attorneys' Compensation. Attorneys' compensation is allowed according to the work actually performed.

E. Fee Declarations. All requests for compensation shall specify the services rendered, the time expended and the hourly rate. The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services as "extraordinary."

F. Set-Up and Termination Fees Re: Trusts. The allowance of a special fee for setting up or terminating a trust is within the discretion of the Court and will be determined on the basis of the work actually performed.

G. When Will or Trust Instrument Sets Trustee's Fees. If the will or trust instrument contains provisions for a trustee's compensation, the trustee is entitled to compensation as provided therein. On a proper showing, the Court may allow a greater compensation when (1) the trustee's services are substantially greater than those contemplated by the testator or settlor at the time the will was signed or the trust was created, (2) the compensation provided in the will or trust is so unreasonably low that a competent trustee would not agree to administer the trust, or (3) there are extraordinary circumstances.

H. Payment in Guardianships, Conservatorships or Trusts. No compensation will be ordered paid in guardianships or conservatorship proceedings until the filing of an inventory and in no event before the expiration of 90 days from issuance of Letters. The Court prefers to determine the amount of fees at the time an account is considered.

I. Compensation Taken in Advance. There is no authority for payment of any compensation in decedent's estates, testamentary trusts, guardianships or conservatorships in advance of a Court order authorizing such payment. Where compensation is paid without Court authorization the Court will require an appearance by counsel or declaration stating the reasons therefore, and interest or a surcharge may be imposed.

[Adopted effective 5/1/98; amended 1/1/04]

5.86 EXPENSES OF TAX RELATED SERVICES, ACCOUNTING AND BOOKKEEPING

The personal representative, conservator or guardian may employ tax counsel, tax auditors, accountants or other tax experts for the preparation of tax returns and for other tax related services, and pay from the funds of the estate for such services. The Court may deduct from the personal representative's statutory compensation any sums paid from estate funds for performance of the representative's ordinary duties such as ordinary accounting and bookkeeping services, including the preparation of schedules for court accountings.

[Adopted effective 5/1/98; amended 7/1/08]

5.87 PROCEDURE FOR OBTAINING COMPENSATION

A. Form of Application for Compensation. An application for compensation may be included in a petition for settlement of account, in a petition for distribution, or in a separate petition. The application should request a specific amount and not merely "reasonable fees."

B. Contents of Application. All applications for compensation in trusts, guardianships and conservatorships must be supported by a description of the services forming the basis for the request, including the surrounding circumstances, the benefit to the estate and the hourly rate of counsel.

C. Notice. Notice will be required to a non-petitioning personal representative or fiduciary and when appropriate, to the residuary beneficiaries, or in an insolvent estate, to the major creditors.

D. Notice to Prior Representative or Attorney. If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any petition in which compensation is requested by the present personal representative, fiduciary or counsel unless:

1. A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;

2. An agreement on the allocation of compensation is on file or included in the petition; or

3. The file and the petition demonstrate that the compensation of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the Court.

E. Proposed Order for Extraordinary Compensation in Decedent's Estates. When extraordinary compensation is requested, the amount requested should be inserted in the proposed order, even though the fees have not yet been allowed by the Court. If the Court allows a fee other than that requested, counsel may revise the order or have the Court change and initial the amount allowed.

[Adopted effective 5/1/98]

5.88 COMPENSATION DECLARATIONS EXCEEDING 15 PAGES OR CERTAIN AMOUNT

Any declaration for compensation exceeding 15 pages or any declaration where the aggregate amount for any one type of service rendered exceeds $20,000 (i.e., if services for the sale of real property exceed $20,000) must include a summary of services rendered by category. The categories may include, but are not limited to, the following:

1. Conservator of Person.

a. Visits to conservatee;

b. Medical arrangements for conservatee;

c. Living and care arrangements for conservatee.

2. Conservator of Estate/Personal Representative in Decedent's Estates.

a. Sale of real and/or personal property;

b. Tax related services;

c. Litigation;

d. Bookkeeping services;

e. Financial management of assets requiring specific expertise;

f. Property management of specific assets (e.g., rental property).

[Adopted effective 5/1/98; amended 1/1/04]

5.89 EXECUTOR/ATTORNEY COMPENSATION ON SALE OF REAL PROPERTY

Where the attorney or personal representative is also a licensed real estate agent or broker, the attorney or personal representative may collect the statutory fee as well as the commission on the sale of real property subject to prior Court approval, however, no extraordinary fees shall be awarded.

[Adopted effective 5/1/98]

5.90 REIMBURSEMENT OF COSTS

A. Allowed Reimbursements. Allowable reimbursement costs include:

1. Court Clerk's fees;

2. Newspaper publication fees;

3. Surety bond premium;

4. Appraisal fees.

B. Absorbed as Part of Statutory Fee. The following costs are absorbed as part of the statutory fee:

1. Photocopies and postage;

2. Secretarial and word processing time;

3. Paralegal time for ordinary services;

4. Computer time;

5. Local telephone calls;

6. Local travel, mileage and parking.

C. Reimbursed only in Court's Discretion. The following costs may be reimbursed in the Court's discretion:

1. Substitutes for U.S. Postal Service (Federal Express, UPS, etc.);

2. Long distance telephone;

3. Long distance travel.

[Adopted effective 5/1/98; amended 1/1/04]

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Mariposa County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Mendocino County
Probate Rules

Effective January 1, 2010

CHAPTER 13
PROBATE RULES

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13.14 FEES OF ATTORNEYS AND FIDUCIARIES

CHAPTER 13
PROBATE RULES

13.1 APPLICABILITY OF RULES

The rules stated in this chapter, as well as those stated in Chapter 7 (Presentation, Filing, Service and Maintenance of Court Papers) and as to contested matters, those stated in Chapter 8 (Law and Motion) shall govern all proceedings involving estates of decedents and guardianship, conservatorship and testamentary trusts.

(Adopted effective 1/1/99.)

13.2 SUBMISSION OF MATTER WITHOUT APPEARANCE BY COUNSEL OR WITNESSES

A matter that by law may be determined by declaration, affidavit or verified pleading and without testimony may ordinarily be submitted for appropriate action by the court without appearance by counsel or witnesses provided that all necessary papers, including declarations and proposed orders must be delivered to the clerk within the time limit prescribed. The proposed orders, when delivered, shall bear the date on which the hearing is originally noticed.

a. All filings of probate matters setting a hearing date shall be filed no later than 1:30 p.m. of the fourth court day prior to the probate calendar. All filings for a hearing on the probate calendar presented to the clerk after 1:30 p.m. on the fourth court day prior to the probate calendar shall be calendared for the next probate calendar that is more than four court days thereafter. The

clerk shall not accept any moving papers setting a hearing date less than four days from the filing date unless a signed court order shortening time is presented along with the moving papers.

b. Upon the call of the probate calendar as to any matter for which an appearance is required a failure of the moving party to appear when called may, in the court's discretion, cause the matter to be ordered off calendar.

c. When a matter is to be dropped, counsel for the moving party shall promptly notify the probate clerk.

(Adopted effective 1/1/99.)

13.3 NONRESIDENT PERSONAL REPRESENTATIVE TO FURNISH BOND

Notwithstanding a waiver of bond by operation of law or contained in a will, every nonresident of the State of California who is not a sole heir, and who requests independent powers, shall furnish the required statutory bond as a condition of said persons appointment as personal representative, unless a waiver of bond is filed by all of the heirs of the decedent's estate.

(Adopted effective 1/1/99.)

13.4 CERTIFICATE OF DEATH

In all proceedings in which the fact of death is to be determined by the court, there shall be filed with the court as an attachment to the petition or as a separate exhibit filed before the hearing a certified copy of the applicable certificate of death.

(Adopted effective 1/1/99.)

13.5 REQUIRED FORM OF ACCOUNTS

All accounts filed in probate proceedings, which shall include guardianship, conservatorship and testamentary trust accounts, shall conform to California Probate Code Sections 1061-1064 as they may be amended.

(Amended effective 1/1/02; adopted effective 1/1/99.)

13.6 APPOINTMENT OF EXPERT TO ANALYZE COMPLEX ACCOUNTS AND SURCHARGE OF COST AGAINST REPRESENTATIVES

When, because of the volume or complexity of an account, an analysis thereof by the court would appear to be unusually time consuming or difficult, the court will on its own motion appoint an expert, usually a certified public accountant to analyze the account and report to the court. The compensation for such expert shall be fixed by the court and ordered paid from the assets of the estate as a cost of administration. If the court finds that the account was unnecessarily voluminous or complex the representative or the attorney, or both, shall be surcharged the amount of such compensation.

(Adopted effective 1/1/99.)

13.7 ALLOWANCE OF CLAIMS OF PERSONAL REPRESENTATIVE

Claims of personal representative shall be allowed pursuant to Probate Code section 9252 only upon a written motion for the allowance thereof after every person interested in the estate shall have been given notice of the hearing of said motion, in the manner provided by Code of Civil Procedure section 1013 and only after every person interested in the estate shall have been given a copy of said motion except that the court may approve such claim ex parte if it is for reimbursement for payment of funeral or burial expenses. The motion shall set forth the specific dollar amount of the claim or the specific item to which the claim refers.

(Adopted effective 1/1/99.)

13.8 STATEMENT REGARDING BOND ON INVENTORY AND APPRAISAL

Counsel for the personal representative or the personal representative, if acting without counsel, will complete all appropriate statements regarding the representative's bond which are called for on the inventory and appraisal form in current use with the approval of the Judicial Council of California.

(Adopted effective 1/1/99.)

13.9 INVENTORY AND APPRAISAL—CERTIFICATE REQUIRED UNDER REVENUE AND TAXATION CODE, SECTION 480

Pursuant to Probate Code 8800(d), the inventory and appraisal shall be accompanied by a certification under Revenue and Taxation Code section 480. A certification form (Property Tax Certification) is available from the clerk's office.

(Adopted effective 1/1/99.)

13.10 ORDER OF PROBATE

No Order of Probate shall be certified unless letters have issued.

(Adopted effective 1/1/99.)

13.11 INSTRUCTIONS FROM THE COURT

A Petition for Instructions made pursuant to Probate Code section 9613, et seq., or Probate Code section 10500 shall set forth the factual situation upon which the petitioner seeks instruction and it shall set forth in detail the instructions that the petitioner believes will be in the best interest of the estate and the parties interested therein.

(Adopted effective 1/1/99.)

13.12 GENERAL INSTRUCTIONS TO CONSERVATOR/GUARDIAN

In all conservatorship and guardianship matters, no letters shall issue unless the conservator or guardian have executed and filed with the court General Instructions. The form of general instructions may be obtained from the clerk's office.

(Adopted effective 1/1/99.)

13.13 DUTIES AND LIABILITIES STATEMENT

No Duties and Liabilities Statement will be accepted for filing if the social security or driver's license number is included on the statement.

(Amended effective 1/1/09. Adopted effective 1/1/99.)

13.14 FEES OF ATTORNEYS AND FIDUCIARIES

Refer to Chapter 19 of these rules.

(Adopted effective 1/1/99.)

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Merced County
Probate Rules

Effective January 1, 2010

RULE 200: PROBATE RULES — PREFACE

It is not the court's intent in adopting these rules to cover every anticipated question or concern, but rather to provide a few additional guidelines which are considered important for local practice. Nor does the Court intend these rules to be a research tool. The Probate Department of the Merced Superior Court encourages the use of the Probate Code, California Rules of Court, Judicial Council forms, and the publications of the Continuing Education of the Bar as valuable guidelines and references with respect to local practice.

Unless stated otherwise, all references in this Rule are to the California Probate Code.

a. Time and Place of Hearing

All uncontested probate hearings and contested matters which are not expected to exceed twenty (20) minutes in length shall be set at 8:30 a.m. on Monday - Thursday. All hearings which are likely to exceed twenty (20) minutes in length should be set at 10:00 a.m., on a Monday.

b. Applicable Rules

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

c. Appearances

(1) There is no Probate Commissioner or Examiner in Merced County. Tentative rulings are not given.

(2) Appearances are required on all petitions for appointment of conservators, and/or guardians and confirmation of sale of real or personal property and on any petition to which objections are filed.

(3) If the moving party does not appear on any calendared matters, cases involving issues which are incomplete or questionable may be continued one to two weeks or may be dropped from calendar, depending on the circumstances.

(4) See Rule 4d for telephone appearances.

d. Forms Approved by the Judicial Council

All probate forms printed and approved by the Judicial Council are mandatory in Merced County. Failure to use such forms may result in the Clerk's refusal to file a submitted document.

e. Orders

Except in the case of confirmation of sales, contested matters and orders requiring information from a governmental agency, the moving party shall submit the proposed order at least three (3) court days prior to the hearing date. Orders shall have the scheduled hearing date, time, and department noted on the face sheet below the title of the document.

f. Appointment of Representative(s)

(1) Where a petition seeks the appointment as personal representative of a person or persons other than the petitioner, a written consent to serve as personal representative must be filed for each such proposed personal representative.

(2) Each personal representative must execute and file an acknowledgement of receipt of Judicial Council Form "Duties and Liabilities of Personal Representative" (Form DE-147) before the court issues letters.

g. Notices

(1) In a petition for probate of a will, all persons and organizations named in the will or codicils shall be listed.

(2) If a named devisee predeceased the decedent, that information must be provided in the notice. In cases where the devisee dies after the decedent, the date of death must be stated and notice must be mailed in care of his or her personal representative if one has been appointed, or alternatively, to another appropriate representative.

(3) A declaration specifying good faith efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required.

(4) If there are no known heirs of the decedent and no heirs of a predeceased spouse pursuant to Section 6402.6, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate all such heirs.

(5) The trustee of a living trust who is a beneficiary of a will shall be listed as a devisee and noticed.

(6) The Clerk does not handle the preparation, mailing or publication of notices. Notices must be prepared and submitted at the time of filing the applicable petition, and the moving party is responsible for all required mailings and newspaper publications.

h. Defective Notice

If the publication is correct but the mailing is defective, the hearing normally will be continued to allow enough time for the mailing of the required amended notice, and republication is not required. If the mailing is correct but the publication is defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

i. Bond

(1) Pursuant to Section 10453, if a bond is otherwise required, if full authority under the Independent Administration of Estates Act (IAEA) is sought, and if the personal representative at the time of the initial petition for probate intends to sell real property through a notice of proposed action (without court confirmation), the latter fact shall be stated in the petition to enable the court to determine whether the initial qualifying bond should be fixed to include anticipated proceeds from the sale of real property.

(2) Every person appointed as personal representative shall give a bond approved by the court before letters are issued unless otherwise waived in the will or in writing. If 2 or more persons are appointed the court may require a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.

(3) If written waivers are attached to the petition, bond will be waived by the court pursuant to Section 8481, provided all heirs or beneficiaries are competent to act. If any such person is incompetent (e.g. minors) an appropriate representative is required to waive bond on behalf of such person. This section does not apply if the will requires a bond.

(4) A personal representative who is a non resident of California and who is nominated to serve without bond, still may be required to post such bond as the court may require, where good cause of such a requirement is shown.

(5) If the will names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all serve, the court shall require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

(6) It is the duty of the fiduciary or fiduciary's attorney, upon becoming aware a bond is insufficient to immediately apply for an order increasing the bond. Such application accompanied by a proposed order, may be made ex parte. See CEB publications for forms.

j. Creditor's Claims

(1) Creditors shall file their claims with the Clerk's office and mail a copy to the personal representative. The disposition of all such claims must be reported to the court on the Judicial Council "Allowance or Rejection of Creditor's Claim" form, prior to any distribution. This requirement also applies to fiduciaries acting under the IAEA.

(2) If the personal representative is acting under the IAEA, the court will not review the personal representative's allowance or rejection of a creditor's claim unless good cause is shown, except as to claims of the personal representative or the attorney. All claims of the personal representative or the attorney must be submitted to the court for approval.

(Effective July 1, 2004).

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Modoc County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Source: Estate Planning/California Local Probate Rules/Mono County Probate Rules

Mono County
Probate Rules

Effective July 1, 2006

This county does not have comprehensive local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

CHAPTER 9
PROBATE RULES

9.1 TAX CERTIFICATES

All real and personal property taxes due on estate assets must be paid prior to final distribution. A Property Tax Clearance Certificate (required to be on file prior to final distribution) will be issued by the Mono County Tax Collector after the Assessor has received all of the following documents:

(A) A copy of the Petition for Probate.

(B) Change of ownership statement for each parcel of real property in Mono County in which decedent owned an interest, if such real property will be included in the Inventory of estate assets.

(C) An endorsed copy of each Inventory filed in the estate. Receipt by the Assessor of an endorsed copy of any Inventory marked "Final" will act as an automatic request for issuance of the Property Tax Clearance Certificate.

If it is likely that a final Inventory will not be on file within ninety (90) days of the date of death, mail directly to the Assessor within that period a copy of the Inventory that the personal representative plans to file (appraised values are not necessary), and thereafter furnish the Assessor with endorsed copies of the Inventories actually filed.

(Rule 8.1 renumbered rule 9.1 effective July 1, 2005; adopted effective July 1, 2001.)

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Monterey County
Probate Rules

Effective January 1, 2010

CHAPTER 4
PROBATE DEPARTMENT

PREAMBLE

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CHAPTER 4
PROBATE DEPARTMENT

PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law.

ADMINISTRATION AND ORGANIZATION

4.01 PROBATE JUDGE

The Probate Judge shall be designated by the Presiding Judge.

(Adopted effective October 1, 1998)

4.02 OTHER PROBATE LAW AND COURT RULES

The provisions of the within chapter are not intended to embody all law or proceedings applicable to the situations described herein. Furthermore, while reference may be made to statutory and case law current at the time these Rules were revised, counsel are advised to take such steps as may be necessary to become familiar with the law in existence at the time their matters are before the Court. Unless otherwise inconsistent with this chapter as indicated herein, all other Monterey County Superior Court Local Rules are applicable to Probate Cases.

(Adopted effective October 1, 1998)

4.03 SIGNATURE OF JUDGE

Any order or document on a calendared matter requiring the signature of the judge must first be submitted to a Research Attorney for examination.

(Adopted effective October 1, 1998)

4.04 CONSOLIDATION OF RELATED CASES

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same proceeding, the court will, on its own motion at the first hearing, consolidate all of the matters with the file bearing the lowest number. The file bearing the lower or lowest number will be referred to as the controlling file. All documents filed after consolidation must bear the case number of the controlling file. Upon consolidation, the clerk must transfer all documents in consolidated files to the controlling file with the exception of a copy of the order of consolidation.

(Rule 4.04 previously Adopted effective October 1, 1998; Amended January 1, 2002; Renumbered as 4.05 and New Rule 4.04 Adopted effective January 1, 2009)

4.05 MATERIAL TO BE INCLUDED IN PROBATE ORDERS

a) Complete in Themselves. Orders shall contain the name of the judge presiding, the date of hearing and the department. All

orders or decrees in probate matters must be complete in themselves. They shall set forth, with the same particularity required of judgments in civil matters, all matters actually passed on by the Court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based. Orders may reference attached exhibits where use of the exhibits is meant to safeguard against typographical errors, for example where lengthy property descriptions are involved. Exhibits must reference the case name and number. The preferred practice is to incorporate the Exhibit into the Order and provide for a judicial signature element at the end of the Exhibit. All pages of the Order shall include the case name and number in a footer or header.

b) Orders Settling Accounts. In orders settling accounts it is proper to use general language approving the account, the report and the acts reflected therein. It is not sufficient in any order to recite merely that the petition as presented is granted. Orders settling accounts must also contain a statement as to fees approved, fees waived, and the balance of the estate on hand, specifically noting the amount of cash included.

c) Whenever an Order shall be submitted to the Court, it will be accompanied by two complete, legible copies, along with copies of all documents attached to the proposed Order.

(Adopted effective October 1, 1998; Amended effective January 1, 2002; Rule 4.04 Renumbered as 4.05 and Amended effective January 1, 2009; Amended January 1, 2010)

4.06 APPLICATIONS FOR EX PARTE ORDERS, CONTENT OF ORDER

Applications for ex parte orders must be accompanied by a separate order, complete in itself. It is not sufficient for such an order to provide merely that the application has been granted.

Since no testimony is taken in connection with ex parte petitions, the application must contain sufficient facts to support granting the prayer.

Please contact the Superior Court Clerk's office to determine whether an appearance is required to present an ex parte petition and order for a judge's signature.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Rule 4.05 Renumbered as 4.06 effective January 1, 2009)

4.07 TELEPHONE CALLS TO RESEARCH ATTORNEY

The Research Attorneys are not required to provide answers to general legal and/or hypothetical questions. General legal questions or questions involving hypothetical fact situations, will be discussed at the discretion of the Research Attorney. Such discussions may not be cited as authority for actions subsequently taken. Research Attorneys should not be considered an alternative to basic legal research.

(Adopted effective October 1, 1998; Rule 4.06 Renumbered as 4.07 and Amended effective January 1, 2009)

4.08 PROBATE CALENDAR

Probate matters are heard in Monterey at 10:00 a.m. on Friday mornings. Please see the Court website at http://www.montereycourts.org, or call the Court at (831) 647-5800, for specific times. If Friday falls on a courthouse holiday, Probate may be heard on the preceding judicial day at the discretion of the Presiding Judge. Matters shall be calendared at least 30 days prior to the hearing date. The petitioner shall include an appropriate date and time on for hearing on the documents submitted.

Normally probate matters are heard on the documents and declarations submitted. If testimony is required or the hearing will require more than ten (10) minutes, arrangements should be made for a special setting. Special settings are set by way of properly calendared motions.

If it shall appear, when a matter is called, that it will require more than ten (10) minutes, the Court may reset the matter to another time and/or day.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective July 1, 2004; Rule 4.07 Renumbered as 4.08 and Amended effective January 1, 2009)

4.09 SUBMITTED CALENDAR

Certain probate, guardianship, and conservatorship proceedings may be submitted to the Probate Court without the necessity of a Court appearance by the petitioner in pro per or by the attorney for the petitioner. To determine if an appearance is required, two weeks prior to the hearing, the Petitioner or attorney for petitioner may access case information by utilizing the "View Probate Notes" on the Probate section of the Court's website at http://www.montereycourts.org/Probate.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2004; Rule 4.08 Renumbered as 4.09 and Amended effective January 1, 2009)

4.10 PROPOSED ORDERS—TIMING, FORM AND CONTENT

a) With the exception of sales of property, Orders After Hearing in all uncontested matters must be submitted no later than twenty-one calendar days prior to the hearing date.

b) Where matters have been continued, new Orders reflecting the continued hearing date must be submitted no later than twenty-one calendar days prior to the hearing date.

c) The attorney preparing a formal order following a contested Court hearing must provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. Objections to form or content relating to orders prepared by counsel for signature by the Court must be in pleading form. Letter objections will be disregarded.

d) In all conservatorships where Conservator is represented by counsel, counsel must approve the proposed Order as to form and content.

e) Orders must be separate documents. Orders may not be included in the body of a Petition.

f) Orders may not include a blank judicial signature page following the text on an Order. Use footers on the signature page which would include the case name and case number.

(Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2006; Amended effective January 1, 2007; Rule 4.09 Renumbered as 4.10 and Amended effective January 1, 2009)

PLEADINGS

4.11 WITHDRAWAL OF COUNSEL OF RECORD

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

a) Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

b) The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, Ziegler v. Nickel (1998) 64 Cal. App. 4th 545. Court approval may be obtained by noticed motion.

c) Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

(Rule 4.11 previously Adopted effective October 1, 1998; Renumbered as 4.13 effective January 1, 2009; New Rule 4.11 Adopted effective January 1, 2009)

4.12 CAPTION OF PETITIONS AND PLEADINGS

With the exception of Judicial Council Forms, all separately filed Pleadings must include

in the caption, the date, time, and place of hearing. Separately filed pleadings include later filed Declarations responsive to inquiries made by the Court in advance of the Hearing date.

The Calendar Department of the Superior Court Clerk's Office is not required to read the body of the petition or the prayer to determine the adequacy of the pleading. The caption of petitions must be all-inclusive as to the relief sought in the petition so that

the matter may be properly calendared and posted, and filing fees, if any, determined. If any part of the estate is to be distributed to a trust, the caption must so indicate.

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002; Rule 4.10 Renumbered as 4.12 and Amended effective January 1, 2009)

4.13 PLEADINGS MUST BE SIGNED BY REPRESENTATIVE, TRUSTEE, GUARDIAN OR CONSERVATOR

An executor, administrator, trustee, guardian or conservator is an officer acting pursuant to Court order. All accounts, petitions and other pleadings made in an official capacity must be signed and verified by such officer. The code provision allowing attorneys to verify certain pleadings in civil matters is not applicable to probate proceedings when the representative is acting in his or her official capacity.

(Adopted effective October 1, 1998; Rule 4.11 previously Adopted effective October 1, 1998; Renumbered as 4.13 effective January 1, 2009)

4.14 AMENDMENT OF PLEADINGS

a) Amended/Amendment to. An amended pleading, or an "amendment to" a pleading, as distinguished from a "supplement," requires the same notice (including publication) as the pleading which it amends. When a Judicial Council Form was used for the original pleading, the amended pleading shall also use a Judicial Council Form on which the word "Amended" is added to the caption.

b) Supplemental Pleading. A supplement to a petition should be captioned "Supplement To…" A properly captioned supplement does not require additional notice, but service of a copy of the supplement is still required in appropriate cases. In general, a supplement provides additional or clarifying information in support of the prayer of a petition.

Judicial Council Forms may be used to "amend" pleadings. They should not be used as an "Amendment To…" or "Supplement To…" a pleading, as these forms are complete in themselves.

(Adopted effective October 1, 1998; Rule 4.12 Renumbered as 4.14 effective January 1, 2009)

4.15 FILING DEADLINE

a) Initial pleadings for trust matters filed per Probate Code section 17200, initial guardianship petitions, pretrial conservatorship petitions, petitions for appointment of successor conservatorship, and any other petitions requiring the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.

b) Probate matters, conservatorship matters that do not require the participation of the Court Investigator, and any other petitions that do not require the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.

c) When statutes provide that papers may be filed within three (3) calendar days of the hearing, service on opposing counsel must be by personal delivery (or by FAX when permitted by Rule 2.306 of the California Rules of Court).

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective January 1, 2007; Amended effective January 1, 2008; Rule 4.13 Renumbered as 4.15 and Amended effective January 1, 2009)

STIPULATIONS

4.16 CONTINUANCES

Matters may not be continued by the petitioning party or by stipulation of counsel without authorization from the Court which should be sought through the Court's Research Attorney if set for hearing within five (5) working days.

Matters which have been set by the Court shall not be continued at any time without authorization from the Court.

(Adopted effective October 1, 1998; Rule 4.14 Renumbered as 4.16 effective January 1, 2009)

NOTICES, PUBLICATION AND SERVICE OF CITATIONS

4.17 NOTICES GENERALLY

Notice requirements with respect to particular petitions or matters are set forth elsewhere in this chapter. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.15 Renumbered as 4.17 effective January 1, 2009)

4.18 ADDITIONAL NOTICE REQUIREMENTS

a) When Additional Notice is Required. Under the provisions of Probate Code section 1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings. The Court will require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

b) Termination of Guardianship and Conservatorship. This rule also applies in termination of guardianships and conservatorships. Notice and a copy of the petition must be given to a former minor, or a former conservatee on the settlement of the final account. Notice and a copy of the petition must also be given to the representative of the estate of a deceased ward or conservatee.

(Adopted effective October 1, 1998; Rule 4.16 Renumbered as 4.18 effective January 1, 2009)

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.19 NOTICE RE: SPECIAL LETTERS

Petitions for Special Letters will ordinarily not be granted without notice to the surviving spouse, the person nominated as executor, and any other person who on examination of the petition appears to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If a proper petition has been filed and it appears that a bonafide contest exists, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.17 Renumbered as 4.19 effective January 1, 2009)

4.20 ALLEGATIONS IN PETITIONS RE: HEIRS OR BENEFICIARIES

a) Nominated Trustee(s). The nominated trustee(s) of a trust created by a will must be listed as a devisee or legatee. If the trustee is also the estate representative or no trustee has been appointed, the individual trust beneficiaries must also be set forth and served with notice of hearing as set forth in Probate Code section 1208.

b) Post-deceased Heirs, Devisees or Legatees. If an heir, devisee or legatee dies after the decedent and a personal representative has been appointed for the heir, devisee or legatee, the heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the heir, devisee or legatee should be listed as deceased and notice should be given to the heirs, legatees, or devisee of the post deceased heir. In either case, the date of death should be included.

c) Contingent Heirs. All contingent heirs and legatees must be listed in the petition and are entitled to receive notice of the hearing.

(Adopted effective October 1, 1998; Amended effective January 1, 2001) Rule 4.18 Renumbered as 4.20 effective January 1, 2009)

4.21 SUBSEQUENT PETITIONS FOR PROBATE

Any other wills or codicils not specifically mentioned in the original petition must be presented to the Court by way of an amended petition or a second petition, and a new notice thereon must be published. Attaching a copy of any instrument without specific reference to it in the petition is insufficient (Est. of Olson (1962) 200 CA2d 234.) Where a will has been previously admitted and a Petition for Letters Testamentary or of Letters of Administration With-Will-Annexed is filed, the same notice is required as on the original petition.

(Adopted effective October 1, 1998 Rule 4.19 Renumbered as 4.21 effective January 1, 2009)

4.22 NOTICE BY MAIL — BY WHOM GIVEN

a) Petitioner to Give Notice. Probate Code section 1041 requires the clerk to cause a hearing to be set on petitions, accountings, etc. The burden is upon the petitioner, or his/her attorney, to give notice of the hearing, or cause it to be given, and to file the proper proof of service. (See Probate Code sections 1041, 8003, 8100, 8110.)

b) Notice to a Minor. Notice to a minor heir or minor beneficiary shall be sent to any legally-appointed Guardian, and if none, to any adult having legal custody of such minor.

(Adopted effective October 1, 1998; Rule 4.20 Renumbered as 4.22 effective January 1, 2009)

4.23 HEIRS WITHOUT KNOWN ADDRESSES

The Court will require an affidavit or declaration stating specifically what efforts were made to locate an heir, devisee or legatee whose whereabouts is unknown before it will accept notice mailed to him or her at the County Seat under Probate Code section 1220. Addressed as follows:

General Delivery

Post Office

Salinas, CA 93902

(See also Judicial Council comments on Code of Civil Procedure section 413.30 as to what efforts are necessary.)

(Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 4.21 Renumbered as 4.23 effective January 1, 2009)

4.24 CONTINUANCE TO PERMIT FILING OF WILL CONTEST

If an interested party appears in person or by attorney when a petition for the probate of will is called for hearing and declares that he/she desires to file a written contest, the Court will ordinarily continue the hearing with the understanding that whether or not a contest is actually on file at the new hearing date, the hearing will nevertheless proceed.

(Adopted effective October 1, 1998; Rule 4.22 Renumbered as 4.24 effective January 1, 2009)

4.25 PETITIONER SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE

The Court requires all Petitioners, seeking appointment as a personal representative, to file the Confidential Statement of Birth Date and Driver's License Number pursuant to Probate Code Section 8404 (b).

(Rule 4.25 previously Adopted effective October 1, 1998; Amended effective January 1, 2008; Renumbered as 4.28 effective January 1, 2009; New Rule 4.25 Adopted effective January 1, 2009)

4.26 BONDING OF PERSONAL REPRESENTATIVES

a) Waiver of Bond in Will. The fact that bond has been waived in the will should be alleged. Bond may be required for an executor who resides outside California even though waived in the will.

b) Waiver of Bond Ineffective. Where bond has been waived as to specifically named individuals and those individuals do not act, the waiver of bond is ineffective.

c) Two or More Executors. If the will names two or more executors but all do not wish to serve or cannot serve in such capacity and the will does not specifically waive bond as to less than the number specified, a bond may be required of those who do qualify.

d) Court Appointed Fiduciaries. When the Court has appointed a fiduciary, the amount of the bond shall include "a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs" as set forth in the California Rules of Court, Rule 7.207.

e) Increase or Reduction of Bond. When the bond must be increased, the Court favors the filing of an additional bond rather than a substitute bond; when the bond may be reduced, the Court favors the use of an order reducing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be noticed and set for hearing.

f) Duty to Petition to Increase. It is the duty of an estate representative, or counsel, if counsel becomes aware of facts

evidencing that the bond should be increased, to petition the Court for an ex parte order increasing the bond to the total appraised value of personal property on hand plus one year's estimated annual income from real and personal property. See also Local Rule 4.46 for required statement of counsel on "Inventory and Appraisal."

g) Description of Bonds in Accounts. In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property, and a statement of any additional bond required.

h) Bond for Sale of Real Property. In all cases where independent powers to sell real property are granted (i.e., full power), the Court will require a bond covering the value of the real property, unless bond is statutorily waived. When an additional bond is required upon an order confirming sale of real property the additional bond should be submitted with the proposed order. The order will not be signed until the additional bond is filed.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2008; Rule 4.23 Renumbered as 4.26 and Amended effective January 1, 2009; Amended effective January 1, 2010.)

4.27 BOND FOR SPECIAL ADMINISTRATORS

Pursuant to Probate Code section 8481(b), unless sufficient allegations are set forth to warrant waiver, the Court will require a special administrator to post bond.

(Adopted effective October 1, 1998; Rule 4.24 Renumbered as 4.27 effective January 1, 2009)

4.28 ISSUANCE OF LETTERS

a) Duties and Liabilities Form. To assure that his/her duties are understood, each Personal Representative of a decedent's estate must file with the Court, before Letters are issued, "Duties and Liabilities of Personal Representative" signed by him/her. All Personal Representatives shall complete and file the "Confidential Statement of Birth Date and Driver's License Number." This form is confidential and is sealed before being placed in the Court file.

b) Filing Bond. If a bond has been ordered, it must have been previously filed or must be presented along with the Letters to be issued.

(Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 4.25 Renumbered as 4.28 effective January 1, 2009)

4.29 DECLINATIONS AND CONSENTS TO SERVE

a) Declination of Named Executor. It is insufficient merely to allege that the person named in the decedent's will as executor thereof declines to act as such. A written declination to act, verified under penalty of perjury (Code of Civil Procedure section 2015.5) by such person, must be filed with the Court.

b) Two or More Executors. If a petition for letters to be issued to two or more executors is filed, and one or more of the named executors is not a petitioner, each non-petitioning executor must file a consent to act, verified under penalty of perjury.

(Adopted effective October 1, 1998; Rule 4.26 Renumbered as 4.29 effective January 1, 2009)

4.30 MULTIPLE REPRESENTATIVES

When multiple personal representatives are appointed, Letters shall be issued jointly to all of them, and not separately to any of them, unless specifically permitted by Court order.

(Adopted effective October 1, 1998; Rule 4.27 Renumbered as 4.30 effective January 1, 2009)

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.31 SPOUSAL PROPERTY PETITIONS

a) Probate Referee. Appointment of a probate referee is optional in accordance with the Probate Code.

b) Wills. If decedent died testate, a copy of the Will must be attached to the petition.

c) Proof of Community Property Claim. Where there is no Will and no written Community Property Agreement, the petition to determine and/or confirm community property must contain the following allegations:

1) Date and place of marriage.

2) Whether or not decedent owned any real or personal property on date of marriage. If so, describe and give approximate values.

3) Whether or not decedent ever received any property after date of marriage by gift, bequest, devise, decent, proceeds of life insurance or joint tenancy survivorship. If so, describe and give approximate values and date of receipts.

4) If any property was received by decedent under 3 above, whether or not it is still a part of this estate. If so, identify.

5) Any additional facts upon which the claim of community property is based.

6) If the claimed community character of the property is based on any document, a photocopy of that document, showing signatures, should be attached to and authenticated by the petition or by a supporting affidavit or declaration.

(Adopted effective October 1 1998; Rule 4.28 Renumbered as 4.31 effective January 1, 2009)

4.32 PROVISION RE: SURVIVORSHIP

If a spouse's right to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse until the expiration of the survivorship period.

(Adopted effective October 1, 1998; Rule 4.29 Renumbered as 4.32 effective January 1, 2009)

INDEPENDENT ADMINISTRATION

4.33 DISTRIBUTION UNDER ACT

a) Schedule of Claims. In any petition for distribution, a schedule of claims must be included as part of the petition, showing the name of the claimant, amount claimed, date presented, date allowed, the amount allowed and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice of rejection with affidavit of mailing to the creditor must be on file. The notice of allowance should not be filed, unless the creditor is the personal representative and/or counsel for the estate.

b) Preliminary Distribution. Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent. If the Court has questions concerning the propriety of a preliminary distribution, the Court may require an accounting.

c) Description of Independent Acts. In any petition for distribution, all independent acts taken without prior Court approval shall be set forth and described, and an allegation made that the 15-day notice of proposed action was duly served and that no objections were received or that notice was not required. The original "Notice of

Proposed Action", with attached affidavit of mailing shall be on file with the Court. If certain acts have been properly reported in a prior petition for distribution, and notices filed, they need not be reported again.

(Adopted effective October 1, 1998; Rule 4.30 Renumbered as 4.33 effective January 1, 2009)

PETITIONS FOR INSTRUCTIONS GENERALLY

4.34 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

a) Available Only Where No Other Procedure Provided. The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute.

b) Specification of Instructions. The petitioner shall set forth in the petition and prayer the specific instructions which petitioner believes the Court should give, rather than asking the Court to select among a choice of options.

c) No Instruction as to Distribution. The Court is without power to "instruct" as to the manner in which an estate should be distributed. Such direction can only be furnished on a petition for distribution or by a petition to determine heirship. (Estate of Thramm (1945) 67 CA2d 657; Estate of Hoffman (1968) 265 Cal. App. 2d 135.)

(Adopted effective October 1, 1998; Rule 4.31 Renumbered as 4.34 effective January 1, 2009)

4.35 PETITIONS TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY PURSUANT TO PROBATE CODE SECTION 9860

a) Caption. Such petitions shall be captioned in such a manner as to alert the clerk that the petition is one filed pursuant to Probate Code sections 9860 et seq., so the clerk can assure proper posting and setting for the hearing.

b) Notice of Hearing. The notice of hearing must contain a description of the property to which the petition pertains sufficient to give adequate notice thereof to any party who might be interested in the property, including, with respect to real property, the street address of the property, or if none, a description of the location of the property. Thirty (30) day notices of hearing are required.

c) "Answer." All notices of hearing given on such petitions must contain a statement advising that any person interested in the property, which is the subject of the petition, may file an answer to the petition. The Court prefers that an answer or answers be filed to assist the Court in its trial of the issues.

(Adopted effective October 1, 1998; Rule 4.32 Renumbered as 4.35 effective January 1, 2009)

CREDITORS' CLAIMS

4.36 FILING, APPROVAL, REJECTION AND PAYMENT OF CLAIMS

a) Use of Forms. Creditors' claim forms are available for use by claimants and should be used to avoid any ambiguity as to whether or not a claim has in fact been filed within the statutory period. Notice to the estate of a debt must be given in the form of a claim filed as a demand against the estate and in a form sufficient to apprise the representative of the estate of the nature of the claim or demand. (Nathanson v. Superior Court (1974) 12 Cal. 3d 355.) Creditors' claims must be on the Judicial Council Form, filed with the Court, and mailed to the personal representative by the creditor. The name and address of the attorney for the estate should appear on the claim.

b) Approval and Rejection. All claims filed must be acted on by the representative. It is the duty of the attorney for the representative to see that all claims filed are ultimately allowed or rejected on the proper Judicial Council Form.

(Adopted effective October 1, 1998; Amended effective July 1, 2004; Amended effective January 1, 2008; Rule 4.33 Renumbered as 4.36 effective January 1, 2009)

4.37 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken. The allegation shall set forth reasons for any delay in making payment. The Court will not allow credit for payment of interest where the delay in payment of the claims is not justified by the facts set forth.

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101, which provides that interest is allowed commencing 60 days after the date of death.

(Adopted effective October 1, 1998; Rule 4.33 Renumbered as 4.36 effective January 1, 2009)

SALES

4.38 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

a) Required Notice. Unless a will specifically grants an executor, as distinguished from an administrator with will annexed, the authority to sell without notice (Probate Code section 10303), a publication of notice of sale of real property is required.

b) Content of Notice. The notice of sale of real property must substantially comply in its content with the following example:

"NOTICE IS HEREBY GIVEN that, subject to confirmation of this Court on (insert date, time and Department), or thereafter within the time allowed by law, the undersigned as (administrator or Executor) of the Estate of the above named decedent, will sell at private sale to the highest net bidder, on the terms and conditions hereinafter mentioned, all right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the real property located in Monterey County, California, as follows:

(Insert Legal Description of Property here.)

APN:

This property is commonly referred to as (insert address here) and includes (insert any fixture included in the price).

The sale is subject to current taxes, covenants, conditions, restrictions, reservations, right of way and easements of record, with any encumbrances of record to be satisfied from the purchase price.

The property is to be sold on an "as is" basis, except for title.

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert Administrator or Executor) and a REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY has been filed in these proceedings, which Report and Petition have been set for hearing on (insert hearing date) and notice made to all interested parties. THE PURPOSE OF THIS NOTICE IS TO INVITE BIDS OVER THE ACCEPTED OFFER, in accordance with the provisions of California Probate Code section 10311. By statute, the initial overbid must be in the amount of (insert First Overbid amount).

Overbids are invited for this property and must be in writing and presented on (insert Court confirmation hearing date) at 10:30 a.m. in Department (insert department no.) of the Superior Court of the State of California, for the County of Monterey, 1200 Aguajito Rd., Monterey, California. Bid forms may be obtained from the attorney for the (Administrator or Executor) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

The property will be sold on the following terms (insert all applicable terms).

The undersigned reserves the right to refuse to accept any bids.

c) Time. If notice of sale is published, any sale must be in accordance with its terms. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed and new notice of sale must be published. Pursuant to Probate Code section 10308, any petition for confirmation of sale must allege that the sale was made within thirty (30) days prior to the date on which the petition was filed. The Court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the Court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.

d) Terms of Sale. The published notice of sale of real property constitutes a solicitation for offers. The terms of the solicitation must be substantially similar to the terms of the accepted offer that is the subject of the Report of Sale and Petition for Order Confirming Sale of Real Property. Published terms of the solicitation cannot be more onerous than the terms of the accepted offer.

e) Defect in Notice. If an executor publishes a notice of sale of real property and proceeds with that sale and later a technical defect appears, this defect cannot be cured by the executor's power of sale given in the will. The publication constitutes an election by the executor to sell by means of publication of notice.

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002; Rule 4.35 Renumbered as 4.38 effective January 1, 2009)

4.39 SALE OF REAL PROPERTY

a) Contract for Sale. The Real Estate Purchase Agreement or other contract of sale shall be attached to the Report of Sale and Petition for Order Confirming Sale of Real Property.

b) Appearances of Counsel. In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the Court will not proceed with the confirmation of the sale in the absence of the attorney, except in those cases where the personal representative, guardian or conservator is present and requests that the sale proceed.

c) Sale Contingencies. Except in exceptional circumstances, all contingencies contained within the Real Estate Purchase Agreement, with the exception of Court Confirmation itself, shall be removed prior to the date of the confirmation hearing. Before the sale is confirmed, counsel shall state for the record that this requirement has been satisfied. Where exceptional circumstances exist to justify a waiver of this requirement, counsel will obtain ex parte authorization to proceed, prior to filing the petition.

d) Continuances. Sale confirmations will be continued only under the most exceptional circumstances. A motion for continuance must be made in open Court.

e) Probate Code §10398, requires that notice be given "to the purchasers named in the petition…"

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.36 Renumbered as 4.39 effective January 1, 2009)

4.40 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

Where full independent powers have not been granted, Probate Code section 10150 permits a representative to grant an exclusive listing for a period of not to exceed ninety (90) days after obtaining the permission of Court. To obtain such permission, the representative must file an ex parte petition setting forth, in detail, the property to be sold, the broker to be employed, the terms of the exclusive listing agreement and the factual reasons why such agreement is necessary and advantageous to the estate. A bare statement of "necessity and advantage" will not suffice.

In all cases, the ex parte order shall provide that a reasonable broker's commission, if any, will be determined by the Court at the time of confirmation of sale.

(Adopted effective October 1, 1998; Rule 4.37 Renumbered as 4.40 effective January 1, 2009)

4.41 BOND ON SALE OF REAL ESTATE

Petitions for confirmation of sale of real estate shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond (as provided in Probate Code Section 8482) at the close of escrow. If no additional bond is required, or if bond is waived, that fact must be alleged. A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note plus whatever cash is paid. If additional bond is ordered, it must be filed prior to obtaining the Court's signature on the order confirming sale.

(Adopted effective October 1, 1998; Rule 4.38 Renumbered as 4.41 effective January 1, 2009)

4.42 BROKER'S COMMISSIONS—GENERAL RULE

a) The order confirming sale must show the total commissions allowed and any allocation agreed upon between brokers.

b) Upon confirmation of the sale of improved real property, the Court will not allow a broker's commission in excess of six percent (6%), unless justified by exceptional circumstances. A commission of up to ten percent (10%) may be allowed for the sale of raw land.

c) A commission exceeding the normal schedule will be allowed only under the most unusual circumstances. Whenever possible, the written agreement of the affected beneficiaries should be obtained.

d) A broker bidding for his own account is not entitled to receive or share in a commission. (Estate of Toy (1977) 72 Cal.App.3d 392)

(Adopted effective October 1, 1998; Rule 4.39 Renumbered as 4.42 effective January 1, 2009)

4.43 DISPUTES ABOUT BROKERS' COMMISSIONS

Normally disputes concerning broker's commissions will be referred to the appropriate Board of Realtors for arbitration.

(Adopted effective October 1, 1998; Rule 4.40 Renumbered as 4.43 effective January 1, 2009)

4.44 TANGIBLE PERSONAL PROPERTY

Commissions on sales of tangible personal property will be allowed only to individuals holding a broker's license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in Court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the court's discretion and will not ordinarily exceed a total of 10% of the sale price.

(Adopted effective October 1, 1998; Rule 4.44 Renumbered as 4.47 effective January 1, 2009)

4.45 SALE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

On a sale of specifically devised or bequeathed real or personal property, 15 days notice of time and place of hearing of the return of sale must be given to the devisee or legatee, unless his/her consent to such sale is filed with the Court.

(Adopted effective October 1, 1998; Rule 4.42 Renumbered as 4.45 effective January 1, 2009)

INVENTORY, ACCOUNTS AND REPORTS

4.46 "INVENTORY AND APPRAISAL" TO SHOW SUFFICIENCY OF BOND

The "Inventory and Appraisal" filed with the clerk shall contain a statement, signed by the attorney, indicating whichever of the following is applicable:

- Bond waived.

- Bond filed $_____insufficient.

- Bond filed $_____sufficient.

If the bond is insufficient the estate representative shall immediately submit an ex parte petition for an order increasing the bond to the amount required by statute; that is, an amount equal to the value of all personal property and one year's income from all sources.

(Adopted effective October 1, 1998; Amended effective July 1, 2004; Rule 4.43 Renumbered as 4.46 effective January 1, 2009)

4.47 PROPERTY TAX CERTIFICATION TO BE FILED WITH "INVENTORY APPRAISAL"

A certification pursuant to Probate Code Section 8800(d) shall be filed concurrently with the filing of the "Inventory and Appraisal".

(Adopted effective October 1, 1998) Rule 4.44 Renumbered as 4.47 effective January 1, 2009)

4.48 REQUIRED FORM OF ACCOUNTS

a) Format of Accounts. All accounts filed in probate proceedings, including guardianship, conservatorship and trust accounts, shall contain a summary or recapitulation showing:

—- Period encompassed by the accounting.

—- Amount of Appraisal, if first account. If subsequent account, amount chargeable from prior account.

—- Amount of receipts, excluding capital items.

—- Gains on sales or other disposition of assets (if any).

—- Amount of disbursements, excluding capital items.

—- Losses on sales or other disposition of assets (if any).

—- Amount of property on hand.

A suggested form of summary is as follows:

SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively, as set forth in this summary of account. The attached supporting schedules are incorporated by this reference.

CHARGES

Amount of Inventory and Appraisal (or, if not the first account: Amount chargeable from Prior Account)	$_____
Receipts during Account Period (Schedule "A")	$_____
Gains on Sales (Schedule "B")	$_____
Total Charges	$_____

CREDITS

Disbursements during account Period (Schedule "C")	$_____
Losses on Sales (Schedule "D")	$_____
Other credits: Property distributed; homestead of other property set apart (Schedule "E")	$_____
Property on Hand (Schedule "F")	$_____
Total Credits	$_____

b) Support of Summary. The summary should be supported by detailed schedules. The schedules of receipts and disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and indicate the appraised value.

c) Distribution to Trustee. When part of the estate is to be distributed to a trustee, and accumulated income is to be paid over by the trustee to the trust beneficiaries, the form of account should permit the Court to determine if the personal representative has properly allocated receipts and disbursements between principal and income.

d) Income and Expenses Attributable To Real Property. In estates where real property is specifically devised, the accounting or a schedule submitted therewith should set forth both the income received from said real property and any expenses allocated thereto (such as taxes, insurance, maintenance). (See Estate of McSweeney (1954) 123 Cal.App.2d 787)

e) Waiver of Accounting. A detailed accounting may be waived by petition when all interested persons consent, are adult and competent. All waivers must be filed with the Court or endorsed on the petition. The effect of the waiver is to make it unnecessary to provide financial details, with the exception of a detailed listing of the property to be distributed and its' value for distribution purposes. All other matters normally reported upon at the time an accounting is filed must be presented in the petition.

f) Account Waiver by Administrator/Trustee. The Court will ordinarily not approve a waiver of accounting where the Estate's Administrator is Trustee of a Trust which is the sole or a primary beneficiary of the estate.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.45 Renumbered as 4.48 effective January 1, 2009)

4.49 ALLEGATION RE: CLAIMS

Prior to filing the interim or final account, counsel are advised to review the Court file to insure that all creditors' claims which may have been filed have been addressed in the interim or final account. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived, to allege merely that all claims have been paid. The claims filed must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection of claim and whether suit on the claim has been filed must be stated.

Known creditors, contacted pursuant to Probate Code sections 9050 to 9054, inclusive, must be listed, whether or not such creditors filed a claim against the estate. Notices of Administration required by Probate Code section 9050 must be on file with the Court prior to, or at the time of, the hearing on the petition for final distribution.

The foregoing allegations must appear in the final report even though they may have appeared in whole or in part in prior reports.

(Adopted effective October 1, 1998; Rule 4.46 Renumbered as 4.49 effective January 1, 2009)

4.50 FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts, per Probate Code section 10810, the accompanying report must state the amount of administrator's or executor's commissions and the amount of attorney's fees sought and must set forth the estate accounted for and the calculation of commissions and fees in substantially the following form:

FEE BASE

Inventory and Appraisal		$_____
Receipts/Income During Admin.		$_____
Gains on Sales		$_____
Losses on Sales		($_____)
	Fee Base	$_____

FEE COMPUTATION

4% on first $100,000	($_____)	$_____
3% on next $100,000	($_____)	$_____
2% on next $800,000	($_____)	$_____
1% on next $9,000,000	($_____)	$_____
1/2% on next $15,000,000	($_____)	$_____
Above $25,000,000	(Amount:	$_____
(Rate:___%)	_____)	
		=========
	Total:	$_____

[Note: Where a petition for distribution is accompanied by a waiver of accounting, detailed schedules of receipts and gains or losses on sale are required for the computation of the statutory fee unless the Inventory and Appraisal value is used as the basis for the fee.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective January 1, 2007; Rule 4.47 Renumbered as 4.50 effective January 1, 2009)

4.51 PROPERTY TO BE DISTRIBUTED MUST BE LISTED

The petition for distribution must list and describe in detail all property to be distributed, individual values and the total value. The description must include any cash on hand and must indicate whether or not promissory notes are secured or unsecured. If any note is secured, the security interest must be described in detail. The petition must include a complete legal description of any real property to be distributed.

The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting incorporated in the petition by reference. Description by reference to the inventory is not acceptable.

The petition for distribution must also list and describe in detail each beneficiary's specific share of all property to be distributed.

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 4.48 Renumbered as 4.51 effective January 1, 2009)

4.52 ACCOUNT—DEBTS PAID WITHOUT VERIFIED CLAIMS—VOUCHERS

Even if a claim has not been filed, the Court may, under Probate Code section 9154, approve the payment of a debt if the accounting shows that such debt was allowed during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the Court and must be justified by allegations in a verified petition.

(Adopted effective October 1, 1998; Rule 4.49 Renumbered as 4.52 effective January 1, 2009)

4.53 ALLEGATION RE CHARACTER OF PROPERTY

In all cases a petition for distribution must contain an allegation as to the character of the property, whether separate or community.

If some portion of the assets consists of community property, the allegation must show whether the interest included is only the decedent's one-half interest in the community property or 100 percent (100%) of the community property of both spouses. In the absence of an election under Probate Code section 13502 by the surviving spouse to include in the estate his/her one-half interest in the community property, the Court has no jurisdiction to order distribution of such interest.

(Adopted effective October 1, 1998; Rule 4.50 Renumbered as 4.53 effective January 1, 2009)

4.54 DESCRIPTION OF DISTRIBUTEES

The names and present addresses of all persons who are affected by the petition, and whether they are adults or minors, must appear in the petition for final distribution.

(Adopted effective October 1, 1998; Rule 4.51 Renumbered as 4.54 effective January 1, 2009)

4.55 COMPLIANCE WITH PROBATE CODE SECTION 9202

Before the Court will authorize distribution there must be a showing of compliance with Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor decedent's spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived

by a spouse, minor child or disabled child. In showing compliance with Probate Code section 9202, petitioner must give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death if there is reason to believe that "an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility." Additionally, the Franchise Tax Board must be given notice of the administration of the estate within 90 days after the date on which letters are first issued to a general personal representative.

(Adopted effective October 1, 1998; Rule 4.52 Renumbered as 4.55 effective January 1, 2009; Amended effective January 1, 2010)

4.56 THE DECREE OF DISTRIBUTION

The decree of distribution shall be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as the will. The decree shall contain:

a) The distribution of property by named beneficiary, with a detailed list describing the property to be distributed to each beneficiary. Description by reference to the inventory is not acceptable. For distribution by reference to an attached exhibit, see Local Rule 4.05.

b) For real property, the legal description and street address, if any, shall be stated.

c) If an intestate decedent who survived his/her spouse leaves no issue, the applicability of Probate Code sections 6402 and 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.

d) Decrees of Distribution Establishing Testamentary Trusts. Upon distribution the Court must determine whether a valid trust has been created by a will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. Since the decree of distribution supersedes the Will (Estate of Callnon (1979) 70 Cal. 2d 150); (In re Lewis (1969) 271 Cal.App. 2d 371), the terms of the trust shall be incorporated in the decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in the present tense and in the third person instead of quoting the will verbatim.

(Adopted effective October 1, 1998; Rule 4.53 Renumbered as 4.56 and Amended effective January 1, 2009)

4.57 RECEIPTS ON DISTRIBUTION

A receipt for property received by a distributee shall be signed by him/her personally. The Court will not accept a receipt signed by an attorney-in-fact, except where there is a pre-existing durable power of attorney and a copy of the durable power of attorney is provided.

A receipt for property received by a distributee shall be specifically itemized, giving the distribution value of each asset and the total value of all property received. (Local Rules 4.56(a) and 4.52.)

(Adopted effective October 1, 1998; Rule 4.54 Renumbered as 4.57 and Amended effective January 1, 2009)

TAXES—SPECIAL REQUIREMENTS

4.58 INCOME TAX CERTIFICATE

a) Franchise Tax Board Certificate. If the inventoried estate is appraised at more than $400,000 and more than $100,000 in the aggregate has been distributed or is distributable to beneficiaries or heirs who do not reside in California, final distribution will not be permitted unless there is first filed with the clerk a state income tax certificate issued by the Franchise Tax Board pursuant to Revenue and Taxation Code section 19513 certifying that all state personal income taxes imposed upon the decedent or the estate have been paid or payment is secured. Such certificate is issued upon the condition that the decree of distribution will be signed by the Court on or before a specified date.

b) Expiration Date of Certificate. Decrees of final distribution will not be signed after the expiration of the date specified in the certificate. Although such certificate is not required and will not be issued by the Franchise Tax Board on a preliminary distribution, attorneys are cautioned that adequate funds must be withheld on preliminary distribution to pay or secure payment of such taxes on final distribution. Final distribution will not be allowed in the absence of such a certificate.

c) Application to Distributions to Trustees. This section also applies to all non-resident trustees, irrespective of place of residence of the beneficiaries.

(Adopted effective October 1, 1998; Rule 4.55 Renumbered as 4.58 effective January 1, 2009)

ATTORNEY FEES AND PERSONAL REPRESENTATIVE COMMISSIONS IN DECEDENTS' ESTATES

4.59 FORMAT FOR REQUESTING FEES

An application for fees will not be considered unless the caption and prayer of the petition and the notice of hearing contain a reference to that application.

(Adopted effective October 1, 1998; Rule 4.56 Renumbered as 4.59 effective January 1, 2009)

4.60 FEES TAKEN IN ADVANCE

There is no authority for the payment of fees in decedents estates in advance of a Court order authorizing the same.

(Adopted effective October 1, 1998; Rule 4.57 Renumbered as 4.60 effective January 1, 2009)

4.61 ALLOWANCE ON ACCOUNT OF STATUTORY FEES

Allowance on account of statutory fees will be granted by the Court only in proportion to the work actually completed, and ordinarily no more than fifty percent (50%) of the statutory fees will be allowed prior to the approval of the final account and the decree of final distribution. Until the final account is settled no part of the statutory fees will be allowed without a detailed description of services performed and remaining to be performed. An unsubstantiated claim that, e.g., fifty percent (50%) of the requested work has been performed is not sufficient. Until the final account is settled, the Court is unable to fix the total amount of statutory fees and any allowance made prior to that time must be low enough to avoid the possibility of overpayment.

The Court will allow a preliminary award of statutory fees only for good cause shown and ordinarily only in conjunction with a preliminary distribution of the estate.

(Adopted effective October 1, 1998; Rule 4.58 Renumbered as 4.61 effective January 1, 2009)

4.62 APPORTIONMENT OF FEES

Ordinarily, if apportionment of statutory fees between multiple attorneys is necessary, the Court will not allow partial payment but will defer all statutory fees until the final account is settled.

(Adopted effective October 1, 1998; Rule 4.59 Renumbered as 4.62 effective January 1, 2009)

4.63 BASIS FOR STATUTORY FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts or in petitions for distribution accompanied by a waiver of accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation. (Local Rule 4.50)

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.60 Renumbered as 4.63 and Amended effective January 1, 2009)

4.64 DECLARATION RE: SEPARATE ATTORNEY'S AND EXECUTOR'S FEES

a) Fees may be awarded to a law firm of which a partner or shareholder is the personal representative only if an agreement not to participate in each other's compensation is first on file in the probate proceeding. Reference shall be made to its filing date in the final account.

b) Whenever the attorneys representing an estate and the executor of the estate are members of the same law firm and each is requesting a separate fee but there is no specific provision in the will indicating the decedent/testator was informed of the possibility of separate fees, in addition to the declaration not to participate in fees, a declaration must be filed stating: 1) whether the decedent/testator was informed that there would be a separate fee for each in such situations; 2) whether the decedent/testator consented to that arrangement; and 3) what relationship existed between the attorney and the decedent/testator which would justify the receipt of separate fees as executor and as attorney in such a situation. The declaration must be served on all interested parties.

c) When counsel for the personal representative, or another member of counsel's law firm, is retained by the estate to represent it with respect to a civil matter, the personal representative shall first seek Court approval of the fee arrangement or demonstrate

to the Court in the form of a declaration that the fee arrangement was reviewed by independent counsel for the estate.

(Adopted effective October 1, 1998; Rule 4.61 Renumbered as 4.64 effective January 1, 2009)

4.65 FORMAT FOR REQUESTING EXTRAORDINARY FEES

a) Compensation for Extraordinary Services. An application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice of hearing contain a reference to that application.

b) Discretion of Court. The award of extraordinary fees and commissions is within the discretion of the Court. Ordinarily extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See Estate of Walker (1963) 221 Cal.App.2d 792.)

c) Standards. The standards by which extraordinary fees and commissions will be determined for personal representatives and attorneys are reasonableness and benefit to the interested parties. The Court will take into consideration, among other things, the mandatory statement of facts, as required in California Rules of Court, Rule 7.702.

(Adopted effective October 1, 1998; Rule 4.62 Renumbered as 4.65 and Amended effective January 1, 2009)

4.66 USE OF PARALEGALS

Pursuant to Probate Code sections 10811(b), 2642(a), 8547(d), and 10953(d), the use of paralegals to perform services of an extraordinary nature is permitted. The Court will require an itemized statement of services rendered by each paralegal, accompanied by allegations relating to the qualifications of the paralegal, both as to experience and training.

(Adopted effective October 1, 1998; Rule 4.63 Renumbered as 4.66 effective January 1, 2009)

4.67 PERSONAL REPRESENTATIVE COMMISSIONS

Local Rules 4.61, 4.62, 4.63, 4.64 and 4.65, are also applicable to requests for commissions for personal representatives in decedents' estates.

(Adopted effective October 1, 1998; Rule 4.64 Renumbered as 4.67 and Amended effective January 1, 2009)

TRUSTS

4.68 TRUSTEES' ACCOUNTS

Accounts filed by trustees under authority of Probate Code section 16062 should conform to the requirements set out in Local Rule 4.48 as well as Probate Code sections 1060 through 1064. If the trust is a testamentary trust, the starting balance of the first account must conform to the trustee's receipt filed on distribution of the assets of the decedent's estate.

Except for trusts that are subject to the continuing jurisdiction of the Superior Court (see Probate Code sections 17300-17354), the Court will order an accounting and report by a trustee only when an account is requested by someone beneficially interested in the trust. (Probate Code section 17200(b)(5).)

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 4.65 Renumbered as 4.68 and Amended effective January 1, 2009)

4.69 BENEFICIARIES TO BE LISTED IN PETITION

All petitions involving a testamentary trust or an inter vivos trust under Probate Code section 17200 must set forth the names and last known address of all beneficiaries, whether their interests are vested or contingent—that is, all persons in being who shall or may participate in the income or corpus of the trust.

(Adopted effective October 1, 1998; Rule 4.66 Renumbered as 4.69 effective January 1, 2009; Amended effective January 1, 2010)

TRUSTEE AND TRUSTEE'S ATTORNEY FEES

4.70 TRUSTEE FEES

Requests for trustee fees must be supported in the petition or in a separate verified declaration stating the nature, necessity, success, cost in time, detail of services performed, the value of the services believed to warrant additional fees, and the amount

requested. Mere recitation of time spent, without more, is not adequate. In making this determination the criteria set forth in Estate of Nazro (1971), 15 Cal.App.3d 218 shall be applied. The Court has discretion to require further justification for all trustee fees. Although the Court will, as a general guideline, allow a fee of 3/4 of 1% of fair market value per annum, Court approval must nevertheless first be obtained in all instances where the amount of compensation is not expressly authorized in the trust instrument. Mere recitation of the 3/4 of 1% guideline is not sufficient. Trustees who base their requests for compensation on this guideline shall include a second column in the accounting which shall indicate the fair market value of each trust asset next to the carry value.

(Adopted effective October 1, 1998; Rule 4.67 Renumbered as 4.70 effective January 1, 2009)

4.71 ALLOWANCE OF ATTORNEY FEES FOR TRUSTEE REPRESENTATION

Attorney fees for trustee representation will be allowed according to the work actually performed. In general, requests for attorney fees must be supported in a petition or in a separate verified declaration stating the specific nature, benefit, time expended, detail of services performed and the amount requested. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support.

(Adopted effective October 1, 1998; Rule 4.68 Renumbered as 4.71 effective January 1, 2009)

MISCELLANEOUS

4.72 USE OF POST OFFICE BOX NUMBERS

Any documents which require the address of the fiduciary in any probate, conservatorship or guardianship matter must provide a complete street address. The use of P.O. Box numbers or letters is not acceptable.

(Adopted effective October 1, 1998; Rule 4.69 Renumbered as 4.72, effective January 1, 2009)

4.73 TRUSTEE'S BOND

Court Appointed Fiduciaries. When the Court has appointed a fiduciary, the amount of the bond shall include "a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs" as set forth in the California Rules of Court, Rule 7.207.

(Adopted effective January 1, 2010)

MEDIATION PROGRAM

4.74 PROBATE MEDIATION PROGRAM RULES

(See rule 6.12, Court-Directed Mediation Program Rules.) (Adopted effective October 1, 1998; Rule 4.70 Renumbered to 4.73 effective January 1, 2009; Rule 4.73 Renumbered to 4.74 effective January 1, 2010)

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Napa County
Probate Rules

Effective January 1, 2010

RULE 9: PROBATE

9.1 PROBATE DAYS

9.2 PREPARATION OF ORDERS

9.3 PRE-APPROVED PROBATE CALENDAR (SEE TENTATIVE RULING SYSTEM, LOCAL RULE 2.10)

9.4 MATTERS REQUIRING APPEARANCE

9.5 FILING OBJECTIONS—CONTINUANCES

9.6 COSTS

9.7 COMPENSATION OF ATTORNEYS, CONSERVATORS, GUARDIANS, TRUSTEES AND REQUESTS FOR EXTRAORDINARY FEES

9.8 STATUTORY FEES AND COMMISSIONS IN DECEDENTS' ESTATES

9.9 PRELIMINARY DISTRIBUTIONS

9.10 PAYMENT OF COURT INVESTIGATOR FEES

RULE 9: PROBATE

Except as otherwise specified by these rules the procedures set out in the California Rules of Court and Probate Code govern all probate proceedings.

(Effective 7/1/02)

9.1 PROBATE DAYS

The Probate Calendar is heard in the Civil Trial Department at 8:30 a.m. Monday through Friday. The probate calendar includes probate and conservatorship matters. Guardianships are heard on the Family Law calendar.

(Effective 7/1/02)

9.2 PREPARATION OF ORDERS

All motions and petitions must be accompanied by a proposed Order or Letters.

(Effective 7/1/02)

9.3 PRE-APPROVED PROBATE CALENDAR (See Tentative Ruling System, Local Rule 2.10)

Routine unopposed probate matters submitted by counsel and approved by a tentative ruling, with the exception of the matters listed in Rule 9.4, do not require appearance by counsel. If the matter is not approved by tentative ruling, the tentative ruling will state that the court is either continuing the case for two weeks for any defects to be remedied, or placing the matter on the calendar for appearance by counsel. For approved matters, the court will file the order and/or Letters and return up to two endorsed copies to counsel's courthouse folder. Counsel requiring return of endorsed copies by mail must submit a self-addressed stamped envelope.

(Effective 7/1/02)

9.4 MATTERS REQUIRING APPEARANCE

The following probate matters require appearance of counsel or parties at the hearing:

A. Application for appointment of conservator;

B. Termination of conservatorship (other than by death of the conservatee);

C. Contested matters;

D. Other matters at the request of the Court.

(Effective 7/1/02)

9.5 FILING OBJECTIONS—CONTINUANCES

Objections to a matter on the probate calendar must be in writing, filed with the court and served on counsel for petitioner at least five days before the scheduled hearing. If the attorney representing the petitioning party has not received notice of the objections and is not at the hearing, the matter will be continued for two weeks. Written objections shall then be filed and served 5 court days prior to the continued hearing date.

(Effective 7/1/02; revised 7/1/03)

9.6 COSTS

Costs must be itemized. However, up to a total of $200.00 in "miscellaneous costs" for duplication or telephone calls or the like by the personal representative or the attorney may be approved without itemizing.

(Effective 7/1/93)

9.7 COMPENSATION OF ATTORNEYS, CONSERVATORS, GUARDIANS, TRUSTEES, AND REQUESTS FOR EXTRAORDINARY FEES

A. No compensation for conservators or guardians or their legal counsel, or for extraordinary fees, shall be paid without prior court approval. The court will review such fee petitions in accordance with the provisions of Rules of Court, rules 7.702, 7.703, and 7.750, et seq. Pursuant to Rules of Court, rule 7.751(b), all petitions for orders fixing and allowing compensation to a guardian or conservator or their legal counsel must comply with Rules of Court, rule 7.702.

B. When court approval is needed for compensation to a trustee, the amount will be determined in accordance with the provisions of Probate Code section 15680, et seq., and Rules of Court, rule 7.776. Generally, a fee of one percent of the market value of the trust assets will be considered the reasonable compensation for ordinary trustee services, although the court will entertain requests for a higher rate of compensation. If a trustee seeks additional compensation for extraordinary services, the trustee must provide the court with a detailed description of the extraordinary services rendered and the amount of additional compensation requested.

C. A party may aid the court in its determination of just and reasonable compensation for trustees, conservators, guardians, or their legal counsel by filing in advance of the hearing a statement addressing factors that may be considered by the court such as those provided in Rules of Court, rules 7.756 and 7.776.

(Effective 7/1/02; revised 7/1/09)

9.8 STATUTORY FEES AND COMMISSIONS IN DECEDENTS' ESTATES

In decedents' estates, allowances on account of statutory fees or commissions will be granted by the court only in proportion to the work actually completed. The last 25 percent of statutory fees or commissions will not be allowed before the approval of the final account and the decree of distribution, unless it can be shown that payment of a greater amount will benefit the estate. All or substantially all of the statutory fees or commissions may be allowed when it is shown that services have been performed but that the estate has not closed because of reasons beyond the control of the petitioning party.

(Effective 7/1/02)

9.9 PRELIMINARY DISTRIBUTIONS

Petitions for preliminary distributions must include a statement as to why the estate may not now be closed.

(Effective 7/1/02)

9.10 PAYMENT OF COURT INVESTIGATOR FEES

Pursuant to Probate Code sections 1513.1 (guardianships) and 1851.5 (conservatorships), the Court shall make an assessment for any investigation or review conducted by the court investigator, and shall order reimbursement to the Court for the amount of the assessment, unless the Court defers or waives reimbursement based on a showing of hardship. Payment of the assessed court investigator fee is due before the initial hearing date on any matter for which a court investigation was conducted. Failure to make timely payment will not delay approval of any petition or accounting, but will result in the matter being referred to the Court's monetary collection program.

If the conservator, guardian, or other person liable for payment of the assessment believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts establishing a hardship.

(Effective 7/1/09; revised 1/1/10)

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Nevada County
Probate Rules

Effective January 1, 2008

CHAPTER 8
PROBATE RULES

8.00 CAPTION OF PETITIONS AND POSTING

8.01 SIGNING AND VERIFICATION OF PLEADINGS

8.02 ADDITIONAL NOTICE REQUIREMENTS

8.03 NOTICE BY CLERK

8.04 SPECIAL OR TEMPORARY LETTERS ON EX PARTE PETITION

8.05 NOTICE WHEN ADDRESS NOT KNOWN

8.06 COPIES OF WILLS AND CODICILS IN PETITION FOR PROBATE

8.07 LISTING AND NOTICING HEIRS, DEVISEES, EXECUTORS AND FIDUCIARIES IN PETITION

8.08 DECLINATION TO SERVE

8.09 AMENDMENTS, CORRECTIONS AND ALTERATION OF PLEADINGS

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8.11 VOLUNTARY MEDIATION PROGRAM

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8.29 ADDITIONAL COPY FOR COURT INVESTIGATOR IN CONSERVATORSHIPS AND GUARDIANSHIPS

CHAPTER 8
PROBATE RULES

8.00 CAPTION OF PETITIONS AND POSTING

(Effective January 1, 1997. Repealed July 1, 2003.)

8.01 SIGNING AND VERIFICATION OF PLEADINGS

(Effective January 1, 1997. Repealed July 1, 2003.)

8.02 ADDITIONAL NOTICE REQUIREMENTS

(Effective January 1, 1997. Amended January 1, 2000. Repealed July 1, 2003.)

8.03 NOTICE BY CLERK

The moving party shall prepare and submit to the clerk as many copies of the notices to be posted, published or mailed by the clerk as the clerk is required to post, publish or mail. Where the notice is to be mailed, the moving party shall furnish to the clerk envelopes addressed to those required to receive notice, with postage prepaid, and with the clerk's address as the return address.

(Effective January 1, 1997.)

8.04 SPECIAL OR TEMPORARY LETTERS ON EX PARTE PETITION

A. *Separate Petition.* A separate petition for probate or permanent letters must first be filed and a hearing date assigned before a petition for special administration or for temporary letters for a conservatorship or guardianship will be considered. The petition for appointment of a special administrator or a temporary conservator or guardian must also be filed before its presentation at the ex parte hearing.

B. *Arranging for and Notice of Ex Parte Hearing.* Unless the court orders otherwise, the party seeking special letters of administration or temporary letters of guardianship or conservatorship shall arrange a time for the ex parte hearing and give notice pursuant to the rules and procedures followed in civil cases. Notice of the application shall be given to the surviving spouse, nominated executor, proposed ward or conservatee, other persons who might be expected to seek letters, and any other persons equitably entitled to notice.

C. *Declaration.* A declaration must accompany the petition setting forth to whom notice was given, the date, time and manner of notice, that notification was given of the time and place of the ex parte hearing and the nature of relief sought, and a statement that notice pursuant to this section has been complied with or an excuse thereof. The declaration is to state what response, if any, was received, and whether opposition is expected.

D. *Urgency or Necessity to be Shown.* The urgency and necessity of special or temporary letters must be shown in an attachment to the petition.

E. *Appearance.* Absent a court order otherwise, the petitioner and the attorney for petitioner shall appear at the ex parte hearing.

F. *Limitation on Time of Letters.* Except in an instance of a contest, special or temporary letters shall issue only for a specified period time, unless the court orders otherwise.

G. *Bond.* The court may require a bond even if the will waives bond or the beneficiaries have filed written waivers of bond.

(Effective January 1, 1997. Amended January 1, 2000.)

8.05 NOTICE WHEN ADDRESS NOT KNOWN

(Effective January 1, 1997. Repealed July 1, 2003.)

8.06 COPIES OF WILLS AND CODICILS IN PETITION FOR PROBATE

The original will shall be filed in support of the petition for probate. In the case of a holographic will or other will of which material provisions are handwritten, the petitioner shall also attach a typed copy of the will. If the will is in a foreign language, an English translation shall be attached. On admission of the will to probate, the court shall certify to a correct translation into English, and the certified translation shall be filed with the will.

(Effective January 1, 1997.)

8.07 LISTING AND NOTICING HEIRS, DEVISEES, EXECUTORS AND FIDUCIARIES IN PETITION

(Effective January 1, 1997. Repealed July 1, 2003.)

8.08 DECLINATION TO SERVE

It is insufficient to allege merely that the person named in the decedent's Will as executor thereof declines to act as such. In addition, a written declination to act, signed by such person, must be filed with the court.

(Added January 1, 2000.)

8.09 AMENDMENTS, CORRECTIONS AND ALTERATION OF PLEADINGS

(Added January 1, 2000. Repealed January 1, 2008)

8.10 HEARINGS BEFORE COMMISSIONER OR RESEARCH ATTORNEY

The commissioner or the court research attorney may sit as a temporary judge on stipulation of all parties litigant or their counsel. Should any party object to the commissioner or research attorney hearing the matter as judge pro tem, the objection must be made at the time the matter is assigned or called for hearing. A failure to object shall be deemed a stipulation that the commissioner or research attorney may hear the matter as temporary judge. (Added January 1, 2000.)

8.11 VOLUNTARY MEDIATION PROGRAM

The court at any time may refer any matters on the probate calendar to a volunteer mediation program.

(Added January 1, 2000.)

8.12 AMOUNT OF BOND

(Effective January 1, 1997. Former 8.08. Renumbered January 1, 2000. Repealed July 1, 2003.)

8.13 WORDING OF PROBATE ORDERS

All orders and judgments in probate matters must be complete in themselves; they shall be worded so that their general effect may be determined without reference to the petition upon which they are based. All matters actually decided by the court, including but not limited to the relief granted, the names of persons and the descriptions of property (including assessor's parcel number and specific legal description), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements must be set forth with the same particularity required in civil judgments.

(Effective January 1, 1997. Former 8.09. Renumbered January 1, 2000.)

8.14 TIME FOR SUBMITTING PAPERS AND ORDERS

All papers relating to a probate hearing, including the proposed order prepared by the moving party and any declaration or affidavit of publication, shall be filed or lodged with the clerk at least three (3) court days before the date of hearing.

(Effective January 1, 1997. Former 8.10. Renumbered and amended January 1, 2000; amended July 1, 2003.)

8.15 FILING OF OBJECTIONS

Objections, including grounds of opposition, to any petition or other pleading filed in probate court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, at least three (3) court days before hearing on the petition or pleading. If written objection has not been filed in accordance with this rule, the court in its discretion may either continue the matter to allow compliance with this rule or decide it as an uncontested matter.

(Added January 1, 2000. Amended July 1, 2003; January 1, 2008.)

8.16 UNCONTESTED MATTERS

A. *Appearance of counsel.* Except as otherwise provided by law, all verified petitions in probate matters shall be deemed submitted without an appearance except that the attorneys shall appear on a petition to confirm sale of real or personal property valued in excess of $100.00. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator. Except where a tentative ruling has been posted, before denying any petition where there is no appearance under this rule, the court will continue the matter to give the petitioner or petitioner's attorney an opportunity to appear. If there is no appearance or other response by the petitioner or petitioner's attorney at the continued hearing, the court may drop the matter from the calendar.

B. *Proposed order in matters submitted without an appearance.* In matters submitted without an appearance by a party or the party's attorney pursuant to subdivision (A), an original and one copy of a proposed order bearing the date of submission shall be delivered to the clerk for presentation to the judge at least three (3) court days before the hearing.

COMMENT: It is the responsibility of the attorney to determine whether the matter has been approved or continued.

(Effective January 1, 1997. Former 8.11. Renumbered January 1, 2000. Amended July 1, 2003.)

8.17 PETITIONS FOR INSTRUCTION

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by the statute.

B. Petitions for instructions should not be used to determine the manner in which an estate should be distributed. A direction of the court regarding distribution of an estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner shall set forth in the petition the instructions which petitioner believes the court should give.

(Added January 1, 2000.)

8.18 MATTERS WHICH MAY BE HEARD EX PARTE

Matters which may be heard ex parte include the following:

A. Sale of securities;

B. Sale of depreciating assets;

C. Family allowance (first application before inventory);

D. Guardianship and conservatorship investments;

E. Appointment of special administrator;

F. Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary;

G. Increase in bond;

H. Amendment of title of proceedings;

I. Authorization to enter into exclusive listing agreement for sale of real property;

J. Preliminary distribution of estate pursuant to Probate Code Section 11623; and

K. Authorization to invest in units of a common trust fund.

(Added January 1, 2000.)

8.19 APPLICATIONS FOR FAMILY ALLOWANCE

A. *Applications made by persons described in Probate Code Section 6540(a).* If made before the filing of the inventory, petition for family allowances for persons described in Section 6540(a) may be presented ex parte to the court. When the petitioner is not the personal representative, consent to the allowance by the personal representative must accompany any ex parte petition. Lack of consent of the personal representative requires a noticed motion. After an inventory has been filed, an order may be made or modified only after notice has been given. Any noticed petition made by persons described in Section 6540(a) shall be made under Section 1220.

B. *Applications made by persons described in Probate Code Section 6540(b).* An order for a family allowance made by persons described in Section 6540(b) may be made only after notice of hearing has been given under Section 1220 to all of the following persons: each person listed in Section 1220 and each known heir and devisee whose interest in the estate would be affected by the petition.

C. *Duration of order.* Ordinarily, the duration of an order for family allowance is limited to six (6) months if no inventory has been filed and to one year if an inventory has been filed. A family allowance commences on the date of the court's order or such other time as may be provided on the order.

D. *Proof required for order.* The person seeking an allowance shall set forth such person's income from sources outside the estate, as well as any itemization of the applicant's separate property and monthly expenses, and shall make an appropriate showing of the assets and liabilities of the estate.

COMMENT: The court discourages requests for retroactive payment of family allowance. Requests for a family allowance should be made in a timely fashion.

(Effective January 1, 1997. Former 8.12. Renumbered and amended January 1, 2000.)

8.20 FEES AND COMMISSIONS

Reference is made to California Rules of Court 7.702, 7.703 and 7.756. In keeping with those rules, this court requires itemized billing statements for extraordinary commissions and fees in probate matters and trustee's fees in trust matters. The itemized billings are to include the date of services rendered, a description of services rendered, time spent, and total charged for each item. The court does not approve trustee's fees based solely on a percent of the trust estate's value.

(Effective January 1, 1997. Former 8.13. Renumbered January 1, 2000. Repealed July 1, 2003. Added January 1, 2006.)

8.21 CREDITOR'S CLAIMS BY PERSONAL REPRESENTATIVE

A noticed motion for approval of a creditor's claim filed by the personal representative, with service of the notice of motion on the heirs and devisees, is required unless: (1) The claim is for reimbursement of funeral and last illness expenses and proof of payment is attached to the claim; (2) The claim together with all other claims of the personal representative, except for reimbursement of funeral and last illness expenses, is less than $1,000; or (3) All persons beneficially interested in the estate approve the claim in writing.

(Effective January 1, 1997. Former 8.14. Renumbered January 1, 2000. Repealed July 1, 2003.)

8.22 SALE OR ENCUMBRANCE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

Absent written consent by the specific devisee or legatee filed with the court, no specifically devised or bequeathed real or personal property shall be encumbered or offered for sale unless first approved by the court on 15 court days notice to the specific devisee or legatee.

(Effective January 1, 1997. Former 8.15. Renumbered January 1, 2000.)

8.23 REQUIRED MATTERS IN A PETITION FOR FINAL DISTRIBUTION

In addition to items otherwise required by law, a petition for final distribution shall contain the following matters unless set forth in the account and report:

A. *Assets.* A list containing a full and complete description of all assets on hand which are to be distributed is to be set forth in the petition as well as the judgment of distribution. Said description is to include the assessor's parcel number and a legal description of all real property to be distributed. The petition shall allege whether the property is community or separate. Where the distribution is made pursuant to Section 6402.5, the source of the property shall be alleged.

B. *Entitlement to distribution.* Facts specifically showing the entitlement of each heir or devisee to the portion of the estate to be distributed to that heir or devisee, including any information concerning predeceased children.

C. *Computation of fees and commissions.* A computation of the attorney's fees and personal representative commissions requested.

D. *Accounting if distribution to trustee, conservator or guardian.* An accounting if assets are to be distributed to a trustee, conservator or guardian.

E. *Agreement of distribution.* An agreement to the distribution signed by each heir with each signature acknowledged must be filed if distribution of assets are to be made in kind and all persons will not share equally in each asset or if the distribution sought is other than that provided by the will or by the laws of intestate succession. The judgment of distribution shall include reference to the agreement which is the basis of the distribution.

F. *Schedule of claims.* A schedule of claims showing the name of the claimant, amount claimed, date presented, date allowed, and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice of rejection with affidavit of mailing to the creditor must be filed.

G. *Testamentary trust.* The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

H. *Costs.* An itemization of costs for which counsel is seeking reimbursement. Costs of long distance telephone calls, photocopies, postage and faxes shall be allowed if properly itemized.

I. *Proration of taxes and costs.* A schedule showing the proration of taxes, fees and costs.

J. *Statement re separate and community property.* A statement of what property is separate and what is community.

K. *Assignment of interest.* If distribution is to be made pursuant to an assignment of interest, the assignment shall be filed and acknowledged and the details of the consideration set forth.

L. *Distribution to trust.* If distribution is to be made to a trust, either an acknowledged statement by the trustee accepting the property under the terms of the trust or a petition by the executor or administrator for the designation of a substitute trustee.

M. *Distribution to minor or incompetent.* If distribution is to be made to a minor or incompetent, either facts showing compliance with Probate Code Sections 3400 et seq. or current certified copies of letters of conservatorship or guardianship shall be filed.

N. *Actions under IAEA.* All capital transactions and other actions taken under the Independent Administration of Estates Act, including the amounts of any gains or losses.

O. *Condition of estate.* Disclosure of liabilities and other matters necessary to show the condition of the estate.

P. *Estate taxes.* That no federal or California estate taxes are payable or that they have been paid.

Q. *Income taxes.* That income taxes and other taxes have been paid or otherwise provided for.

R. *Interest-bearing accounts.* Whether surplus cash was kept in interest-bearing accounts.

(Effective January 1, 1997. Former 8.16. Renumbered January 1, 2000.)

8.24 REQUIRED FORM OF ACCOUNTS

All accounts filed in probate proceedings, including guardianship, conservatorship and trust accounts, shall contain a summary or recapitulation showing:

A. Amount of inventory and appraisement, if first account, or amount chargeable from prior court.

B. Amount of receipts excluding capital items.

C. Gain on sales or other disposition of assets.

D. Amount of disbursement.

E. Loss on sales or other disposition of assets.

F. Amount of property on hand. The required form of summary is as follows:

SUMMARY OF ACCOUNT

The petition is chargeable, and is entitled to the credits, respectively, as set forth in this summary of account. The attached supporting schedules are hereby incorporated herein by reference:

CHARGES	
Amount of Inventory and Appraisement (Or, if subsequent account, amount chargeable from prior account)	$_____
Receipts during Account Period (Schedule A)	$_____
Gain on Sales (Schedule B)	$_____
TOTAL CHARGES	$_____
CREDITS	
Disbursements during account period (Schedule C)	$_____
A Loss on Sales (Schedule D)	$_____
Other credits (Property distributed; homestead or other property set apart Schedule E)	$_____
Property on Hand (Schedule F)	$_____
TOTAL CREDITS	$_____

In all cases the total charges and total credits are to balance. If they cannot be balanced due to an accounting reason, an explanation shall be given in the petition. The summary shall be supported by detailed schedules. The schedules of receipts and disbursements shall show the nature or purpose of each item and date thereof. The schedule of property on hand is to describe each item and indicate the appraised value. Failure to comply with this rule may result in a non-approval of the relief requested in the petition.

(Effective January 1, 1997. Former 8.17. Renumbered January 1, 2000.)

8.25 SPOUSAL PROPERTY ELECTION

Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to Probate Code Section 13502 must be supported by a written election expressly indicating a consideration of the alternative procedures available pursuant to Section 13650. Written elections made pursuant to Section 13502 shall contain an express acknowledgment that the inclusion of the property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney's fees.

(Effective January 1, 1997. Former 8.18. Renumbered January 1, 2000.)

8.26 PETITION TO ESTABLISH FACT OF DEATH

A petition to establish the fact of death (terminate a joint tenancy or life estate) shall be verified and shall have attached as exhibits:

A. A copy of any instrument relating to any interest in the property; and

B. A copy of the death certificate.

No request for fees for services are to be made.

(Effective January 1, 1997. Former 8.19. Renumbered January 1, 2000. Amended July 1, 2003.)

8.27 POSTING OF TENTATIVE RULINGS

The court will post tentative rulings for the probate calendar by 3:30 p.m. on the day before the probate calendar is heard, unless the court elects to post them earlier. At the option of the court, the tentative rulings may be faxed and/or posted on the court's website. The court from time to time and without modification of this rule may change the date and time of posting or eliminate the tentative ruling system for the probate calendar.

Attorneys are urged to review the tentative rulings prior to scheduled hearings. Attorneys may telephone the assigned probate judge's secretary after the posting to obtain the tentative ruling. The secretary is authorized to repeat only the exact language contained in the tentative ruling sheet. If additional information is needed by a party concerning the tentative ruling, a court

appearance will be necessary.

Excluded from said tentative rulings are hearings on conservatorships and guardians, minor's compromises, contested matters, matters set at a time other than the regular probate calendar, any matters requiring an appearance, and such matters as the court may determine in its sole judgment.

(Effective January 1, 1997. Former 8.20. Renumbered January 1, 2000. Amended July 1, 2003.)

8.28 MINOR'S COMPROMISES; WITHDRAWAL OF MINOR'S FUNDS

(Effective January 1, 1997. Former 4.05.4. Renumbered and amended January 1, 2000. Repealed July 1, 2003.)

8.29 ADDITIONAL COPY FOR COURT INVESTIGATOR IN CONSERVATORSHIPS AND GUARDIANSHIPS

For all filings in conservatorships and guardianships, including initial petitions and subsequent petitions and motions, the petitioner or moving party and any party responding or objecting shall serve an extra copy on the court investigator and file a proof of service with the clerk's office.

(Added July 1, 2003. Amended January 1, 2008)

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Orange County
Probate Rules

Effective January 1, 2010

PROBATE RULES

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CHAPTER 1
GENERAL INFORMATION

Counsel and self represented parties are advised to refer to the rules applicable to particular proceedings in addition to the general information provided in this chapter and to refer to California Rules of Court Title 7—Probate Rules.

600. Application

The provisions of this division govern all probate matters where not inconsistent with law or with the California Rules of Court.

In addition to these Probate Rules, parties shall comply with all the provisions of the California Rules of Court and all other Orange County Rules of Court and Policies.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.01 Filing Procedures, Hearings and Telephone Appearances

All documents and papers must be filed in the Probate Division of the Clerk's Office. Orders and ex parte petitions must be left in the designated area of the Clerk's Office for review. Documents and papers are not received in the courtroom.

Probate matters will be calendared for hearing by the Probate Division of the Clerk's Office as determined by the supervising probate judge. All petitions and applications which require a hearing will be assigned a calendar date, time and department upon being filed. Any request for early setting must be approved by the court and will be granted only for good cause.

The calendar date, time and department must be written in the upper left-hand margin of all subsequent documents (such as supplements, proofs of service and notices) which relate to a matter on calendar, so that the Clerk's Office will be aware that the document needs to be promptly processed.

Telephone appearances will be permitted in accordance with rule 3.670, California Rules of Court.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.02 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.03 Lodging Voluminous Materials for Review

Parties may deposit voluminous documents that need not be part of the permanent court file but that are to be considered for their evidentiary value. The documents may be submitted with a self addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The documentation will be returned to the parties after the hearing. Documents for which arrangements are not made may be destroyed 30 days after the hearing.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.04 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.05 Captions of Petitions

The caption of a petition must be all-inclusive as to the relief sought in the petition so that the matter may be calendared and posted properly and filing fees, if any, determined. The Clerk's Office is not required to read the petition to determine the adequacy of the posting.

(Adopted effective July 1, 1992)

601.06 Approved Matters and Probate Notes

The probate notes will be updated to reflect any matters pre-approved by the court.

To view notes go to www.occourts.org, click on probate and then on probate notes.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.07 Contested Matters

The Probate Department may hear contested matters at such times as the court deems appropriate. Contested matters in which the trial time involved is less than one-half hour may be heard on the calendar date or continued to a definite trial date if they cannot be disposed of on the same day.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.08 Continuances

When a petition for probate is called for hearing, if an attorney or party appears and orally objects, and it is stated that written objections to the appointment or a will contest will be filed, the Court may continue the hearing. If the written objections and/or contest is not on file or the objector fails to appear at the new hearing date, the matter will be recommended for approval or

proceed to hearing, as appropriate.

At the call of the calendar, if objection is taken to any matter on the approved list, and petitioner or petitioner's counsel is not present, the court may continue the matter to allow the filing of written objections and giving notice thereof to petitioner. Such continuance shall be made, and petitioner or petitioner's counsel notified in any case wherein the court proposes to effect a substantial change in the relief sought.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.09 Advancement of Hearing

When a probate matter has been set for hearing, or when it has been set and then continued to a definite date, the matter cannot be heard before the date set either by means of a new petition, an amended petition, or by a new notice, except by order of the supervising probate judge.

(Adopted effective July 1, 1992)

601.10 Consolidation with the Lowest Number

Whenever it appears that two or more petitions with different number have been filed with reference to the same decedent, conservatee or minor, the court may, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, shall file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first.

(Adopted effective July 1, 1992)

601.11 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.12 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.13 Petitions for Ex Parte Orders

The procedures for petitions for ex parte orders are posted at www.occourts.org, click on probate and then click on ex parte procedures.

All ex parte petitions must be verified and accompanied by a separate order complete in itself (except for forms approved by the Judicial Council). An order is insufficient if it merely provides that the petition has been granted.

Since no testimony is taken in connection with ex parte petitions, the petition must contain sufficient evidentiary facts to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient. A foundation should be set forth establishing the affiant's personal knowledge.

In cases where pleadings are presented ex parte without attorney service buckslips, attorneys should provide self-addressed envelopes with sufficient postage to have all copies returned to them.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.14 Probate Orders

The party requesting an order must prepare the order unless otherwise directed by the Court. The orders should be submitted separately and not attached to any other document or pleading.

All orders or decrees in probate matters must be complete in themselves (except for forms approved by the Judicial Council). They shall set forth all matters actually passed on by the court, the date of hearing, the relief granted, the names of persons, and descriptions of property or amounts of money affected, with the same particularity required of judgments in civil matters.

All orders must be prepared so that the general effect may be determined without reference to the petition on which it is based. No order shall merely recite that the petition as presented is granted.

All orders calling for distribution to the trustee of a testamentary trust must set forth all provisions of the will or codicil relating to the trust or trustees, in such a manner as to give effect to conditions existing at the time distribution is ordered. For example, pertinent provisions should be set forth in the present tense and in the third person, rather than merely quoting terms of the will verbatim. Counsel are advised to use caution in restating the terms of the will or codicil so as not to create new terms or to confer powers not granted by the court.

The signature line for the court should be as follows:

Dated:_____ _____

Judge/Commissioner of Superior Court

The signature line should never be on a page by itself. The signature line must always be at the end of the order and not followed by any attachment.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.15 Nunc Pro Tunc Orders Correcting Clerical Errors

If, through inadvertence, the minute order or the signed order or decree fails to state the order actually made by the court and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake. Points and authorities are not required.

The nunc pro tunc order must not take the form of an amended order and should be substantially in the following form:

In The Matter of	)	Case No.
	)	
	)	NUNC PRO TUNC ORDER
	)	CORRECTING (insert
	)	title of order being
	)	corrected)

Upon consideration of the declaration of (insert name of declarant), to correct a clerical error, the (identify the order to be corrected, giving the title and date the incorrect order was signed) is corrected by striking the following (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter to be added).

This order is entered nunc pro tunc as of (here insert date the incorrect order was signed).

Dated:_____ _____

Judge/Commissioner of Superior Court

The original order is not to be physically changed by the clerk, but is to be used in connection with the nunc pro tunc order correcting it. To prevent further errors, a complete clause or sentence should be stricken if it is intended to correct only one word or a single figure.

(Adopted effective July 1, 1992)

601.16 Bonds

When a bond must be increased, the court favors the filing of an additional bond rather than a substitute bond. When the bond must be decreased, a petition for reduction of bond must be filed and set for hearing. The court favors the use of an order decreasing the liability on the existing bond rather than the filing of a substitute bond.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.17 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.18 Letters

Notarization is not required of the written affirmation of letters by a fiduciary, whether subscribed within or without this state.

When multiple representatives are appointed by an order which directs that "letters shall issue to them", the clerk will not allow less than all to qualify and have letters issues separately. If qualification of less than all is desired, it must be provided in the order or appointment.

(Adopted effective July 1, 1992)

601.19 Attorneys to Announce their Names

To assure a correct record, all attorneys appearing at probate hearings are requested to announce their names and identify the parties whom they represent when they first speak. (For example: "John Doe, attorney for petitioner", or "John Doe, of Doe, Roe, and Black, appearing for respondents Jack Smith and Alice Jones", or "John Doe, attorney appearing specially for Mary Roe, attorney for petitioner Alex Smith.")

(Adopted effective July 1, 1992)

601.20 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

601.21 Motions to Be Relieved as Counsel of Record

If an attorney wishes to withdraw from a probate proceeding as attorney of record for the estate representative or any other fiduciary, in addition to the requirements under CCP 284 and CRC 3.1362, the attorney must have a citation issued and served on such motion or petition directing the representative to appear before the court to show cause why the motion or petition should not be granted or why the representative has not taken the steps to complete his or her duties.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.22 Law and Motion Matters

All rules of the Local Rules - Superior Court of California, County of Orange, and of the California Rules of Court applicable to civil matters also apply in probate law and motion matters except all documents are to be filed in the Probate Division of the Clerk's Office. The moving party should contact the courtroom clerk of the department where the matter is set if the law and motion matter is resolved prior to the date set for hearing.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

601.23 Guardians Ad Litem

The court, on its own motion or on the request of an interested person, may appoint a guardian ad item in connection with Probate Court matters (Probate Code section 1003). The petition for appointment may be presented ex parte in accordance with the procedures for other ex parte orders, or may be set for hearing with appropriate notices given. A guardian ad litem may be appointed even where the person has a guardian or conservator of the estate if it is deemed by the court expedient to do so.

The petition should suggest an independent individual to be appointed as guardian ad litem, or request that the court choose an individual in its discretion. If left to the discretion of the court, the court prefers to appoint an attorney who can act as his or her own counsel.

The court shall determine fees to the guardian ad litem, as appropriate, and determine from what source such fees will be paid. The court prefers to award such fees at the termination of the guardian ad litem's representation.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

CHAPTER 2
GENERAL NOTICE REQUIREMENTS

602.01. Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

602.02 Additional Notice Requirements

Under Probate Code section 1202, the court may require additional notice in any matter. Ordinarily, the Court will require notice to be given to a person whenever it appears that the interests of that person may be adversely affected by the determination of an issue raised by the pleadings. For example, in a proceeding where the status of property is to be determined, notice should be given to all persons who would be affected.

(Adopted effective July 1, 1992)

602.03 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

602.04 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

602.05 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

602.06 Notice to Trust Beneficiaries

If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust, and the representative is either named to act or acting as the sole trustee, then the Court will require notice to the beneficiaries as required by Probate Code section 1208. In addition, the notice should be accompanied by a copy of the petition or account. If the petitioner in a petition to determine succession to real property or spousal property petition is also the trustee of a trust that is a devisee under the will, notice of the petition must be given to the trust beneficiaries pursuant to Probate Code sections 13152(a)(7) and 13655(b)(2), respectively. In addition, the notice should be accompanied by a copy of the petition.

In appropriate circumstances the Court may require the appointment of and notice to a guardian ad litem for potential beneficiaries if their interests might diverge significantly from those of the beneficiaries who are in being.

(Adopted effective July 1, 1992)

602.07 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

602.08 Notice when Compensation Requested for Extraordinary Services

In every case in which there is a request for compensation for extraordinary services totaling in excess of $1,000.00, the notice must include, in addition to the time and place of hearing, a summary of the matters to be determined, including a statement of the amount of compensation requested for extraordinary services; or, alternatively, a copy of the petition must be served with the notice. If a copy of the petition is served with the notice, the proof of such service should contain an allegation to that effect, but a copy of the petition should not be attached to the original proof of service which is filed with the court.

(Adopted effective July 1, 1992)

602.09 Notice of Petitions Affecting Inheritance Tax

For estates of decedents dying before June 8, 1982, in every instance in which a petition is filed which, if granted, could possibly affect the inheritance tax paid or to be paid, notice of the hearing and a copy of the petition must be given to the State Controller.

(Adopted effective July 1, 1992)

CHAPTER 3
APPOINTMENT OF PERSONAL REPRESENTATIVES

603.01 Special Letters of Administration

A separate Judicial Council form must be used for a petition for special letters of administration, and the petition may not be combined with a petition for the appointment of a general personal representative.

Petitions for special letters of administration may be applied for on an ex parte basis, however, they ordinarily will not be granted without a written notice (five day personal service) to (or written waiver of notice by) the surviving spouse, the person nominated as executor, any person of higher or equal priority as administrator, or any other person who appears to the court to be equitably entitled to notice.

For procedures for applying for appointment for a special administrator, go to www.occourts.org, click on Probate, then click on ex parte procedures.

In making the appointment, preference is ordinarily given to the person entitled to letters testamentary or of administration, but if it appears that a bona fide dispute or contest exists, the court may require appointment of a neutral party as special administrator, upon filing of a proper petition. All heirs and devisees must be listed as set forth in Rule 603.04.

The need for appointment and special powers requested should be set forth with particularity in the attachments to the petition. The special powers should be included in the attachment to the petition and included in the proposed order.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

603.02 Wills and Codicils as Exhibits to Petition

When a petition for probate of will or codicil is filed, the original of the instrument being offered for probate shall be filed prior to or concurrently with the petition, and a copy of the instrument marked as an exhibit shall be attached to the petition. If the original of the instruments being offered for probate has been lost or destroyed, the petition for probate shall include a declaration

regarding the circumstances of the inability to file the original instrument.

If the instrument is holographic or handwritten, a typewritten copy of the instrument must also accompany the petition. (See Probate Code section 8002(b)(1).) If the instrument is written in a language other than English, it must be accompanied by a copy translated into English and a declaration that the copy is a true translation. (See Probate Code section 8002(b)(2).) The declaration shall describe the qualifications of the translator and be signed by the translator.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

603.03 Declinations and Consents to Serve

If the person or entity named as personal representative in the decedent's will declines to act as such, then a written declination to act, signed by the person or entity must be filed with the court. If the written declination is not filed, the petition should indicate the reason. Where a petition seeks the appointment as personal representative of one or more persons who are not petitioners, a consent to serve as personal representative must be filed for each non-petitioning proposed personal representative.

(Adopted effective July 1, 1992)

603.04 Allegations in Petitions re Heirs or Devisees

In petitions for probate of will or for letters of administration, the existence or nonexistence of all separate property and community property heirs or classes of heirs who might be entitled to share in the distribution of the estate should be specifically alleged, whether the estate consists of separate or community property or both.

The nominated trustee of a trust created by a will or a custodian designated for a minor in a will shall be listed as a devisee. If the will presented for probate has a "pour over" provision to a living trust, each trustee shall be listed as a devisee. A beneficiary of either a living or testamentary trust is not a devisee and need not be listed unless the personal representative and the trustee are the same person or there is no trustee. (Probate Code section 1208)

If an heir or devisee dies after the decedent and a personal representative has been appointed, the name of the deceased heir or devisee should be listed with a notation that the person is deceased in the list of heirs and devisees. This should be followed by the name and address of the personal representative. For example: John Doe (deceased) / Jack Smith, Executor of the estate of John Doe, 123 Main Street, Everytown, CA 90000. Notice of hearing must be served by mail at least 15 days before the hearing on the personal representative. If no personal representative has been appointed, the heir or devisee should be listed as deceased and an allegation made that no personal representative has been appointed. In such event, no notice need be given by mail on behalf of that heir or devisee.

All heirs and devisees, including contingent devisees, must be listed in the petition so they will receive notice by mail of the hearing. This includes persons provided for in the original will but whose legacies have been revoked in a subsequent codicil.When second generation heirs are listed, the deceased ancestor through which they take shall be named, along with the deceased ancestor's relationship to the decedent.

When listing an heir or devisee who is a minor, the minor's date of birth should be indicated so that it can be ascertained if the minor will attain majority during administration.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

603.05 Allegations in Petitions re Pour Over to Trust

If the will presented for probate has a "pour over" provision to a trust (other than a trust created in the instrument being offered for probate), the petition for probate must allege whether such trust was executed after, before or concurrently with the execution of the testator's will or relevant codicil and whether said trust was thereafter revoked or not. (See Probate Code section 6300)

(Adopted effective July 1, 1992)

603.06 Request for Authority to Administer Estate under the Independent Administration of Estates Act

If authority is requested to administer the estate under the Independent Administration of Estates Act at the time a petition for probate is filed and the notice published does not so state, the deficiency may not be corrected without a new publication. The court will either continue the matter for republication or deny the request for Independent Administration of Estates Act powers without prejudice.

(Adopted effective July 1, 1992)

603.07 Statement of Address of Nonresident Personal Representative

Probate Code section 8573 requires a nonresident personal representative to file with the court a statement setting forth his or her permanent address and any subsequent change of address. If this has not been done and anyone questions the representative's handling of the estate, the court on its own motion may, and often will, undertake proceedings for removal of the personal

representative.

(Adopted effective July 1, 1992)

603.08 Petitions for Probate Subsequent to Published Notice

The first published and mailed Notice of Petition to Administer under Probate Code section 8100 is sufficient to include all instruments which are offered for probate and specifically referred to in the petition for which notice is given. Any other wills or codicils must be presented to the court by way of an amended petition or a second petition, and a new notice must be published and mailed. The shortened Notice of Petition to Administer provided for in Probate Code section 8125 should only be used when letters granting general powers have already issued.

(Adopted effective July 1, 1992)

603.09 Notice to Foreign Consuls

Notice must be given to a recognized diplomatic or consular official as required under Probate Code section 8113. If a devisee or heir is an American citizen residing in a foreign country, that fact should be alleged and notice to the diplomatic or consular official is not required.

Whether a country has recognized diplomatic or consular representation in the United States may be ascertained from the United States Department of State. A listing of the foreign consular offices in the United States is available at the Probate Division of the offices of the Clerk of the Court.

(Adopted effective July 1, 1992)

603.10 Notice to Public Administrator

In petitions for probate of will or for letters of administration, if it is not clear from the face of the pleadings that the nominated personal representative is entitled to priority of appointment over the Public Administrator under Probate Code sections 8441 through 8467, the Court will require 15 day mailed notice to be given to the Orange County Public Administrator, P.O. Box 11526, Santa Ana, California 92711.

(Adopted effective July 1, 1992)

603.11 Proof of Wills by Affidavit or Declaration

If the attestation clause in a formal will contains allegations that satisfy the provisions of Probate Code section 6113 and is signed under penalty of perjury in accordance with Code of Civil Procedure section 2015.5, then the will is self-proving in uncontested proceedings and can be admitted to probate without an affidavit or declaration by a subscribing witness. If any alterations appear on the will, evidence of when they were made and by whom must be presented.

In uncontested proceedings, wills that are not self-proving must be proved by use of the Judicial Council form rather than by testimony.

If the photocopy of the will attached to the declaration has been made by the clerk's office after the original will has been filed, it will then reflect the clerk's file stamp and will be presumed to be a true copy without further proof thereof. If such photocopy is not made by the clerk, it must bear the Clerk's certification or a certification under penalty of perjury by the attorney of record that such copy is a true copy of the will filed for probate. Certification by an attorney must be dated on or after the date the will was filed. Persons acting in propria persona who are not attorneys at law may not certify the copy of the will.

Except in the case of self-proving instruments, a separate declaration of proof must be submitted for each testamentary instrument, except that when a codicil expressly republishes the will, proof of the execution of the codicil may be deemed sufficient.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

603.12 Lost or Destroyed Will

If a lost or destroyed will is admitted to probate, a copy of the provisions of the will must be attached to the order for probate.

(Adopted effective July 1, 1992)

603.13 Bonding of Personal Representatives

All petitions must state the character and estimated value of the estate and the probable income.

An individual must post bond unless waived by will or by all devisees of decedent's will or, if there is no will, by all of the decedent's heirs. If a devisee is a living trust, the acting trustee may waive bond, but only if the trustee is not the personal representative. If the trustee is the personal representative, then all beneficiaries of the living trust must waive bond. If a deposit is

made to reduce the bond under the provisions of the Financial Code or Probate Code section 8483 then it must be made jointly by all personal representatives (including corporate fiduciaries). See Rule 613.08 for procedure in requesting a blocked account in lieu of bond.

The court will not accept a waiver from or on behalf of a minor unless the person giving the waiver is the guardian of the minor's estate and a certified copy of the guardian's letters issued within 60 days of date of hearing is attached to the waiver.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

603.14 Petition to Set Aside under Probate Code Sections 6600-6615, or for Letters

A petition to set aside under Probate Code sections 6600-6615 may be filed as a separate petition or may be worded in the alternative, i.e., the petition may pray for admission of the will and for letters testamentary, or for letters of administration, if the petition to set aside should be denied. If filed in the alternative, then publication must be made pursuant to Probate Code section 8121. If a petition to set aside is filed separately and concurrently with a petition for admission of the will or for letters of administration, the petitions should be set for hearing at the same time.

On the hearing of a petition to set aside, an inventory and appraisement must be filed five calendar days before the hearing.

(Adopted effective July 1, 1992)

603.15 Addition of Other Names by which Decedent was Known

Petitions to add another name by which the decedent was known, or to add the name of a sole proprietorship under which the decedent was doing business, may be presented ex parte or by noticed hearing. If the Notice of Administration is republished to add another name or the name of a sole proprietorship under which the decedent was doing business, the cost of the republication is a cost of administration.

(Adopted effective July 1, 1992)

CHAPTER 4
PROBATE REFEREES, INVENTORIES AND APPRAISALS

604.01 Probate Referees

In all proceedings in which a probate referee is to be designated by the court, one of the referees shall be designated as follows:

A. A request by the personal representative for the designation of a specific probate referee on a showing of good cause pursuant to Probate Code section 8921 may be submitted ex parte. The request must be presented on Orange County Form 906.

B. Except where the court has designated a specific probate referee on the request of the personal representative pursuant to Probate Code section 8921, the clerk shall draw by lot the name of one of the probate referees, who shall thereafter be designated by the court. One referee is to be designated for matters pertaining to each proceeding. Any variation in the manner of designation of referees shall be made only by the probate judge.

C. In the case of petitions to establish fact of death and spousal/domestic partner property petitions, if designation of a referee is required, a separate order designating the referee should be presented. In the case of petitions for probate which are not joined with spousal/domestic partner property petitions, the order designating the referee is a part of the order for probate.

D. In cases where it is necessary to initiate a subsequent proceeding concerning the same decedent, a new order for designation of a probate referee must be made in the new proceeding. If the attorney desires the designation of the same referee who was designated in the prior proceeding, the attorney should make a written request therefore to the court pursuant to Probate Code section 8921.

E. In cases where the designated probate referee retires or dies and no successor probate referee is designated by the court, the representative shall submit Orange County Form 42 to the clerk in the Probate Division to obtain the designation of a successor.

In all proceedings in which the probate referee is not to be selected by the court (Probate Code sections 13100 et seq., 13150 et seq., and 13200 et seq.), the petitioner or declarant, as the case may be, can select a referee who has been appointed to appraise property in Orange County from a list maintained by the Probate Division of the Clerk's Office. If real property is to be appraised, the referee must be selected from those appointed to appraise property in the county where the real property is located.

In all proceedings in which the personal representative exercises the right, pursuant to Probate Code section 8924(a)(2), to remove the first probate referee designated by the court, the representative shall submit Orange County Form 905.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

604.02 Character of Property

Attorneys are cautioned to comply with Probate Code section 8850(c), which requires that an inventory and appraisal show, to

the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent. Only the decedent's interest in any community or quasi-community property should be included on the Appraisal and not the entire value unless the surviving spouse is electing to probate the surviving spouse's share.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

604.03 Report of Status of Appraisal

In each instance where the probate referee is required to make a report of the status of an appraisal pursuant to Probate Code section 8940(b)(2), such report shall be submitted on Orange County Form 907.

(Adopted effective July 1, 1992)

604.04 Appraisal by Independent Expert

Where the personal representative has elected to have an item appraised by an independent expert per Probate Code section 8904, the representative shall prepare a separate and distinct Attachment 2 (in addition to the Attachment 1 listing the property appraised by the representative) which lists all items appraised by the independent expert. At the end of this attachment there shall be a declaration by the independent expert in the following form:

DECLARATION OF INDEPENDENT EXPERT

I have truly, honestly, and impartially appraised, to the best of my ability, each item set forth on this Attachment 2.

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

Date:_____

_____ _____

(Type or Print Name) (Signature of Independent Expert)

(Adopted effective July 1, 1992; revised effective July 1, 2008)

CHAPTER 5
CREDITOR'S CLAIMS

605.01 Form of Claims

A. Notice to Creditors

Notice of Administration must be given to all known or reasonably ascertainable creditors. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. Form of Claims

Judicial Council Creditor's Claim Form DE-172 must be filed by claimants in all cases commenced on or after July 1, 1988.

Amended claims and revised claims shall be filed in the same manner as the original claims.

Documentary support of all claims must be attached to the claim in accordance with Probate Code sections 9151 and 9152. Where the documentary support is lengthy, claimants should lodge their exhibits with the clerk of the probate department for review by the court, and make arrangements for their return to the claimant when the court has completed its action on the claim. See Rule 601.03.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

605.02 Allowance or Rejection of Claims

Counsel are advised to review the court file for creditors' claims before filing the final accounting.

If Form DE-174 on an allowed creditor's claim is presented for action by the court and the court requires additional or corrective action by the claimant or estate representative, the attorney for the representative will be notified by letter and the Form DE-174 suspended 60 days. If no response is received by the end of the suspense period, the Form DE-174 will be returned without action by the court.

If a personal representative is acting under the Independent Administration of Estates Act, and no action by the Court is being requested on the Form DE-174, the place provided for allowance or rejection by the judge should be endorsed with a statement in substantially the following form: "No Court Action Required."

(Adopted effective July 1, 1992; revised effective July 1, 2008)

605.03 Claims of Representatives and Their Attorneys

The representative shall not pay any claims of the representative or the attorney for the representative without prior court approval. All such claims must be filed with the court within the period allowed by statute. Form DE-174 for allowance or rejection by the court must be submitted within the period allowed by statute. If the court sets the allowance and rejection for hearing, counsel must give required notice to all entitled to notice. See Probate Code sections 9262 and Rule 605.04.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

605.04 Approval of Funeral and Interment Claims

In acting upon creditor's claims for decedent's funeral and interment, the court is bound by Estate of Malgor (1947) 77 Cal.App.2d 535 and other decisions to disallow unreasonably large claims.

All creditor's claims for funeral expenses must contain a statement setting forth the estimated value of the estate. Ordinarily funeral creditors' claims approved by the representative which are reasonable on their face will be approved by the court. Claims unusually large on their face will not be approved until the time for the filing of creditors' claims has expired and it appears that the estate is solvent, unless an affidavit is filed by the representative setting forth facts which justify a larger expenditure by reason of the value of the estate and the standard of living of the decedent.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

605.05 Payment of Interest on Funeral and Interment Claims

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken setting forth reasons for any delay in making payment. The court will not allow credit for payment of interest where the delay in payment of claims is not justified by the facts set forth.

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101.

(Adopted effective July 1, 1992)

605.06 Claims of Personal Representatives for Reimbursement for Debts of Decedent and Funeral Expenses

Debts of decedent incurred prior to death and funeral expenses paid by representatives from their own funds for which they seek reimbursement must be submitted as formal creditor's claims, presented and filed in the usual way and supported by a receipt or other sufficient evidence of payment by the representative. Such claim must be presented to the court for allowance or rejection within the statutory period for presentation of claims.

Administration expenses advanced by the representative do not require the submission of a creditor's claim.

(Adopted effective July 1, 1992)

605.07 Claims Acted Upon by Personal Representatives Acting Under Independent Administration of Estates Act

A schedule of all claims acted upon by the personal representative acting under the Independent Administration of Estates Act prior to Court approval must be listed in any petition for distribution showing the name of the claimant, the amount claimed, the date presented, the date allowed and, if paid, the date and amount of payment. As to any claims rejected, the date of rejection must be set forth and the original notice of rejection with proof of mailing to the creditor must be filed. The petition must also contain an allegation that all debts paid were legally enforceable claims against the estate. See Rule 608.08.

(Adopted effective July 1, 1992)

605.08 Special Creditors' Claims

Public entities' creditor's claims may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

Notice to the Director of Health Care Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted effective July 1, 2008)

CHAPTER 6
SALES

606.01 Sales of Specifically Devised Property

On a sale of specifically devised real or personal property, 15 days notice of the time and place of hearing of the petition for confirmation and copy of the petition must be given to the devisee or the devisee's consent to such sale must be filed.

(Adopted effective July 1, 1992)

606.02 Tangible Personal Property Must Be Appraised Before Sale

Sales of tangible personal property will not ordinarily be approved or confirmed by the court unless the property has been appraised. If necessary, a partial inventory and appraisal or a letter appraisal from the probate referee shall be filed.

(Adopted effective July 1, 1992)

606.03 Sales of Securities Pursuant to Probate Code Section 10200

The following securities need not be appraised before their sale may be authorized by the court:

A. Securities sold on an established stock or bond exchange;

B. National market system securities on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer; and

C. Securities surrendered for redemption conversion.

In all petitions for the sale of securities listed on an established stock or bond exchange, the specific exchange on which such securities are traded, listed and reported must be set forth. For example: NYSE; AMEX; and in the case of over the counter sales, NASDAQ. In petitions for sale of unlisted securities, the recent bid and asked prices must be set forth (the foregoing notwithstanding, see Rule 606.04, below, with regard to the sale of shares in a cooperative). Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

If securities are "closely held," the petition should furnish the basis (by appraisal or otherwise) for fixing the minimum sales price.

(Adopted effective July 1, 1992)

606.04 Sales of Cooperatives and Mobile Homes

Sales of cooperatives (such as residential property where ownership is transferred by transfer of a stock certificate) may be sold as personal property under Probate Code section 10252 if the estate will incur loss or expense by keeping the property or, alternatively, may be sold under Probate Code section 10200 as a security. Similarly, the court may approve sales of mobile homes as depreciating property under Probate Code section 10252.

A. If a Judicial Council form is used, the court prefers that Judicial Council Form DE-275 (Ex Parte Petition for Approval of Sale of Personal Property) be used, and the information regarding broker's compensation, if any, included. If Judicial Council Form DE-270 (Ex Parte Petition for Authority to Sell Securities and Order) is used, the following information should be included:

1. the names of the purchasers;

2. the sale price;

3. the appraised value; and

4. the broker's compensation, if any.

B. Appraisals of the assets being sold will be required. If the cooperative or mobile home is the conservatee's residence or former residence, the appraisal date must be within six months of the date the petition is submitted or a current reappraisal of property should be submitted with the petition. If the sale price is not at least 90% of the appraised value, a declaration by the broker or other person responsible for exposing the property to the market should be submitted with the petition, explaining the exposure and why the sale price is the best that can be obtained.

C. Petitions may be considered by the court ex parte if no requests for special notice are on file or waivers of notice are submitted. If the cooperative or mobile home is the conservatee's residence or former residence, the court will not consider the petition ex parte; rather, it requires a petition for confirmation to be set for hearing notice.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

606.05 Exclusive Listings for the Sale of Real Property

In addition to the requirements in CRC rule 7.453:

A. In all cases, the order shall provide that reasonable compensation to a broker will be determined by the court at the time of confirmation of sale.

B. If the representative is acting under Probate Code sections 10500-10600, court authority is not required to give an exclusive listing.

C. In all conservatorships in which it is proposed to list for sale the family residence, unless the conservator has been granted the power to sell such real property pursuant to Probate Code section 2590, the petition shall contain sufficient allegations to satisfy the requirements of Probate Code section 2540(b).

(Adopted effective July 1, 1992; revised effective July 1, 2008)

606.06 Compensation to Brokers

The compensation to which a broker is entitled is governed by the provisions of the Probate Code (Probate Code sections 10160-10168). Upon confirmation of the sale of real property, the court will not allow compensation to a broker in excess of six percent (6%) unless justified by exceptional circumstances.

(Adopted effective July 1, 1992)

606.07 Required Allegations Regarding Efforts to Obtain the Highest and Best Price

In explanation of petitioner's efforts to obtain the highest and best price, the exposure of the real property to the market must be set forth. The petition shall include the following information:

A. Whether or not the property was listed with a broker. If so, the type of listing and whether the property was placed in multiple listing;

B. The extent of advertising and the method (newspapers, signs, etc.). If a newspaper was used, the number of publications and period of time it was advertised;

C. The number of open houses held, if any;

D. The number of caravans from the listing broker's own office and the number of caravans from other offices, if any; and

E. The total period of time the property was exposed for sale prior to the acceptance of the offer.

If this information is not included in the petition for confirmation the court may require the matter to be continued unless a verified supplement is filed by 4:00 p.m. at least four court days before the hearing.

(Adopted effective July 1, 1992)

606.08 Published Notice and Terms of Sale

Unless a will directs sale or grants an executor the authority to sell real property of the estate (Probate Code section 10303), a publication of notice of sale of real property is required. A power of sale given by a will to a named executor does not extend to an administrator with will annexed, unless the sale is required by the will (Probate Code section 8442).

If notice of sale is published, any sale must be in substantial accordance with its terms. A sale of real property may not be made before the date stated in the notice of sale.

The published notice of sale of real property constitutes a solicitation for offers. A petition must not be filed and an offer must not be accepted prior to the date of sale specified in the published notice. If this is done, the sale will be denied.

When the personal representative accepts an offer and files a petition for confirmation of sale, there cannot be a material variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

In conservatorships and guardianships, absent an order under Probate Code section 2591(d) granting the conservator or guardian the independent power to sell real property of the estate, publication shall be required.

(Adopted effective July 1, 1992)

606.09 Mailed Notice of Sale

In the event of sales for other than all cash (where distribution of promissory notes, etc., which arise out of the sale may be made in kind) the court will require that notice of the hearing for confirmation, together with a copy of the petition for confirmation, be served by mail on the heirs or devisees who would receive the property at least fifteen days before the hearing.

In a conservatorship, notice shall be given to the conservatee by serving the conservatee with a copy of the petition for confirmation of sale and a notice of hearing at least fifteen days before the hearing. In a guardianship, notice shall be given to all minor wards age fourteen or older by serving a copy of the petition for confirmation and notice of hearing by mail on them at least fifteen days before the hearing.

For all sales, notice of hearing and a copy of the petition must also be served by mail at least fifteen days before the hearing on each of the proposed purchasers. See Rule 602.01 Requiring Direct Notice. Proof of the service of such notices must be filed in the Probate Division of the Clerk's Office at least four court days before the hearing or the matter may be continued.

(Adopted effective July 1, 1992)

606.10 Real Property Sales—Appraisals

As provided in Probate Code section 10309, real property must be appraised within one year of the date of the confirmation hearing. As provided in Probate Code section 2543, if the real property to be sold is the conservatee's personal residence or former personal residence, it must be appraised within six months prior to the date of the confirmation hearing, unless the court finds that it is in the best interest of the conservatee to rely on an Appraisal that is more than six months prior to the confirmation hearing. The valuation date of the original inventory and appraisal is, in the case of a decedent's estate, the decedent's date of death and in the case of a guardianship or conservatorship, the date of the appointment of the guardian or conservator, regardless of when the appraisal is actually made. Thus, a reappraisal is required for purposes of sale if the date of the confirmation hearing is more than one year after the decedent's death or the date of appointment of the guardian or conservator.

If no inventory and appraisal has been filed, a partial inventory and appraisal may be filed for this purpose, or a letter appraisal obtained from the probate referee appointed for the estate which states the current appraised value of the property and the date appraised.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

606.11 Conditional Sales of Real Property

Counsel are encouraged by the court not to return a sale of real property which is conditioned upon the occurrence of a subsequent event (such as obtaining financing, changing zoning, or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist, and it is necessary and advantageous to the estate, such sales may be returned.

(Adopted effective July 1, 1992)

606.12 SALES OF REAL PROPERTY WHERE BUYER ASSUMES OR BUYS SUBJECT TO EXISTING ENCUMBRANCE

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement.

(Adopted effective July 1, 1992)

606.13 Requests That Petitions Be Continued or Taken Off Calendar

Subject to change on order of the probate judge, one continuance on the hearing will ordinarily be granted for petitions for confirmation of sale if good cause is communicated prior to the hearing by the attorney to the probate examiner, or at the hearing to the court. Any request for a second continuance will require an appearance by the attorney and determination by the court at the time of hearing.

No petition for confirmation will be taken off calendar by anyone other than the court. The attorney will always be required to appear at the hearing and request the court to take the matter off calendar, because there may be persons at the hearing who wish to bid on the subject property.

(Adopted effective July 1, 1992)

606.14 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

606.15 Proceedings on Overbids on Real Property

In the event there is an overbid made in court on the confirmation for sale of real property, the court will inquire of the estate representative and attorney as to their efforts to notify the original bidder concerning the date of the hearing on the petition for said confirmation, and of the necessity of their presence at court to protect their original bid. The court may continue the hearing for appropriate notice if it finds that the original bidder was not properly notified and might desire to protect his/her bid.

Counsel should be prepared to advise the court as to acceptable terms and conditions of sale if there is an overbid on terms other

than all cash.

If the sale returned for confirmation is upon credit, a higher offer made to the court pursuant to Probate Code section 10311, either for cash or upon credit, whether on the same or different credit terms, shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

If the sale returned for confirmation is for cash and a higher offer made to the court pursuant to Probate Code section 10311 is upon credit, the offer shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

Where there is successful overbid in open court on a sale of real property, counsel must complete, and the successful bidder must execute, an "Increased Bid in Open Court" form. The order will not be signed unless the form is filed with the court.

(Adopted effective July 1, 1992)

606.16 Bonds on Sales of Real Estate

Petitions for confirmation of sale of real property should set forth the amount of bond in force at the time of sale, and the amount of the property in the estate which should be covered by a bond (as provided in Probate Code sections 2320 and 8482(c)). A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note, plus whatever cash is paid. If additional bond is required, or if no additional bond is required, or if bond is waived, that fact must be alleged.

(Adopted effective July 1, 1992)

606.17 Order Vacating Sale and Directing Resale

In the event of buyers' default, the order confirming sale may be vacated under Probate Code section 10350.

In the absence of an order prescribing notice, written notice of hearing shall be mailed at least 15 days before the scheduled hearing to:

A. Defaulting purchasers unless, before the hearing, written consents to the vacation are filed with court:

B. Brokers awarded compensation on the sale to be vacated;

C. All heirs at law or devisees under the will; and

D. All persons who have given notice of appearance or requested special notice.

If an order vacating sale is entered, the property must be resold as in the first instance, except as provided under Probate Code section 10351.

(Adopted effective July 1, 1992)

606.18 Order Vacating Sale and Confirming Sale to New Bidder

Upon the buyers' default, if 60 days have not elapsed since the original confirmation of sale, and a bid is received in the same or better terms, the court can vacate the original order and confirm the sale to new buyers without requirement of new publication of notice. Probate Code section 10351.

In the absence of an order prescribing notice, written notice of the hearing of a petition under Probate Code section 10351 shall be mailed at least 15 days before the scheduled hearing to:

A. Defaulting purchasers unless, before the hearing, written consents to the vacation of the order confirming the prior sale are filed with court;

B. Brokers awarded compensation, if different than the brokers on resale; and

C. All persons who have given notice of appearance or requested special notice.

A petition pursuant to Probate Code section 10351 may be heard ex parte upon presentation of the consents of all defaulting purchasers and waivers of notice by everyone else entitled to notice.

(Adopted effective July 1, 1992)

CHAPTER *7*
MISCELLANEOUS PETITIONS

607.01 Petitions for Family Allowance

A petition for family allowance for the surviving spouse, minor children of the decedent, or physically or mentally incapacitated adult children of the decedent who were dependent on the decedent for support, if made before the filing of the inventory and within six months from the qualification of the personal representative, may be presented ex parte. Ordinarily, the ex parte order for family allowance will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six months. When the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the representative must accompany the petition.

In all other cases the petition for family allowance should be noticed and set for hearing on the calendar. Known creditors should be given notice and a copy of the petition. The order will be limited to a definite period, usually not to exceed 12 months. The court will not make an order for family allowance for an unlimited period.

A petition seeking in excess of one thousand dollars ($1,000.00) per month must contain an itemized estimate of all anticipated monthly expenses, an estimate of the gross and net estate and an estimate of the dollar amount of unpaid claims. Such itemization is preferred in all cases, and may be required with respect to petitions seeking lesser amounts. A petition containing an itemized expenditure for real or personal property must include a statement explaining how title to the property is vested.

In addition, a petition which requests an allowance for a spouse, parent, or adult child who is not incapacitated must contain statements setting forth all income from sources outside the estate, and an itemized description of such person's property.

If the estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a reasonable family allowance in accordance with Probate Code section 10535.

(Adopted effective July 1, 1992)

607.02 Petitions for Authority to Borrow Money—Bonds

A petition for authority to borrow money should state, in addition to the matters set forth in Probate Code section 9802 (b), the identity of the lender, the net amount the estate expects to receive, the amount of bond in force, and if bond is required, the amount by which the bond should be increased. If no additional bond is required, or if bond is waived, that fact should be alleged.

(Adopted effective July 1, 1992)

607.03 Petitions to Determine Title to Real or Personal Property pursuant to Probate Code Section 850

A petition pursuant to Probate Code section 850 should be so captioned to alert the clerk to set the petition for hearing at least 40 days from the date of filing. If difficulties in service of required notices of hearing are anticipated, attorneys are asked to request a later hearing date so as to avoid continuance of the hearing date.

The description of the property in the petition must be sufficient to give adequate notice to any interested party. The description of any real property shall include the street address or, if none, an indication of the location of the property. A copy of the petition must be served with the notice of hearing.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

607.04 Petitions for Permission to Continue Operation of Decedent's Business

In addition to the notice prescribed by Probate Code section 9760 for petitions for permission to continue the operation of a decedent's business, notice of the time and place of the hearing shall be mailed to all heirs or devisees at least 15 days prior to the time set for the hearing.

(Adopted effective July 1, 1992)

607.05 Petitions for Determination of Entitlement to Estate Distribution

A petition under Probate Code sections 11700 et seq. may include a request for an interpretation of the will. The order determining entitlement to estate distribution should provide for complete resolution of the issues raised by the pleadings. Counsel should review the following two cases for guidance in this regard: Bodine v. Superior Court (1962) 209 Cal.App.2d 354 [26 Cal.Rptr.260]; and Estate of Brissel (1963) 218 Cal.App.2d 841 [32 Cal.Rptr.458]. When a determination of distribution is requested in a petition for distribution, notice must be given in the same manner as is required when a separate petition under Section 11700 is filed.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

607.06 Petitions to Vacate Order Fixing Inheritance Tax

In the case of decedents who died prior to the effective date of repeal of the California Inheritance Tax, June 8, 1982, an order confirming report of Inheritance Tax Referee and fixing the inheritance tax may be vacated ex parte within six months of the date of the order either on stipulation of the attorney for the estate and the State Controller or on motion under section 473 of the Code of Civil Procedure.

(Adopted effective July 1, 1992)

607.07 Petitions to Compromise Wrongful Death Claims

Recovery of damages for wrongful death, as distinguished from physical injury and property damage, are held by the fiduciary as a representative of the statutory beneficiaries and are not part of the decedent's estate. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise pursuant to section 9835 of the Probate Code. The clerk sets the petition for hearing, and the personal representative gives notice in the manner specified in Probate Code section 1220.

This procedure is applicable to any action by the personal representative under federal law, as well as state law.

If a personal representative collects damages and costs arising out of the physical injury of decedent, or property damage as distinguished from wrongful death, the representative shall hold such money in his or her representative capacity as property of the estate. Therefore, it (or the claim giving rise to it) must be inventoried.

(Adopted effective July 1, 1992)

607.08 Petitions Filed under the Uniform Transfers to Minors Act (UTMA)

Petitions filed under the Uniform Transfers to Minors Act (Probate Code sections 3900 et seq.) to transfer title to a minor's funds to a custodian on behalf of the minor under Probate Code section 3906(c)(3) must set forth jurisdictional facts (see Probate Code section 3921), state the amount to be paid, state by whom the amount is to be paid, state what reimbursement for costs and/or fees is requested, and request the transfer of the balance of the funds to another adult or trust company as custodian as provided in Probate Code section 3909.

If distribution is to be made from a probate estate to a custodian for a minor, the requirements of Rule 608.21 must also be met in the probate proceeding.

If the petition merely seeks the transfer of the funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorney's fees are sought, the matter must be set on the court's calendar for approval.

The order shall provide for the persons holding the funds to make a check payable to the persons entitled to costs and fees and shall provide for the issuance of a check in the amount to be deposited to be payable to the proposed custodian.

(Adopted effective July 1, 1992)

607.09 Petitions to Authorize Medical Treatment for Adult without Conservator

If authorization of medical treatment for an adult without a conservator is required, the petition should be presented to the Probate Court. If the adult for whom medical treatment is sought (patient) is not represented by an attorney, the court will appoint private counsel or the Public Defender to represent the patient, set the petition for hearing within a day or two and prescribe notice. The court, in setting the petition for hearing and determining what notice is to be given, will consider the urgency, existing medical facts and the circumstances, as set forth in the petition or in a medical affidavit submitted with the petition. If the attorney for the petitioner and the attorney for the patient so stipulate, the court may, upon proper and sufficient medical affidavits or declarations, determine the matter without hearing or notice, make an order authorizing the recommended course of medical treatment and designate the person to give consent.

(Adopted effective July 1, 1992)

607.10 Spousal Property Petitions (Probate Code Sections 13650-13660)

A petition containing an allegation that the character of any property was transmuted after December 31, 1984, by decedent and surviving spouse must be based on a writing (Family Code section 852). A photocopy of the writing showing signatures must be attached to the petition.

If a petition contains an allegation that the character of any property was transmuted before January 1, 1985, by decedent and surviving spouse, such claim may be proved either by a writing or by other supporting facts which must be set forth in the petition.

A petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (1/2) interest in such property should be listed on one schedule and the surviving spouse's undivided one-half (1/2) interest in the same property listed on another schedule.

The following requirements do not apply to a petition if the entire estate of the decedent passes to the surviving spouse either under a will or pursuant to interstate succession and one of the following applies: (a) the petition only seeks determination of the passing of the property without a finding of the character (community or separate) of the property; or (b) the decedent and

surviving spouse executed a written agreement transmuting or confirming all property owned at the date of the agreement and all after-acquired property into community property; or (c) the decedent and surviving spouse executed a written agreement which transmuted or confirmed the subject property to community property and the date of acquisition of the subject property is alleged. If (b) and/or (c) apply, copies of all agreements must be attached to the petition. In all other cases, the petition must be supplemented to include the following allegations:

A. Date and place of marriage; and domicile at the time of marriage;

B. Dates decedent and a surviving spouse came to California, if not domiciled in California at time of marriage or resided in another state after marriage;

C. If decedent owned any real or personal property on the date of marriage, a description of such property and the approximate value;

D. Decedent's occupation and net worth at the time of marriage;

E. Whether or not the decedent received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, a description of such property, giving approximate values and dates of receipt;

F. If any property was received by decedent under E above and is part of the estate, identify the property;

G. The exact title vesting as of the decedent's date of death for each item of property and a statement whether it was acquired after December 31, 1984;

H. If claims are based on any document, attach a photocopy of the document showing signatures; and

I. In addition to the above, set forth any additional facts upon which claim of character of property is based.

(Revised effective January 1, 1994)

607.11 Petitions for Change of Name

The petitioner and the petitioner's attorney, if any, are required to attend the hearing and appear one half (1/2) hour before hearing.

An adult petitioning for a change of his or her name should be prepared to submit to the court at the hearing a certified copy of his or her birth certificate (if born in the United States), or documents issued by the Immigration and Naturalization Service, such as a Certificate of Citizenship or Resident Alien Card (if born outside the United States), so that the court can determine the correct spelling of the name.

If the petition contains a request for change of name of a minor:

A. The minor may be required to attend the hearing if he or she is 14 years of age or older; and

B. The parent should be prepared to submit to the court a certified copy of the child's birth certificate, if born in the United States, or a properly authenticated copy of a foreign birth certificate together with an English translation (including a declaration as to the qualifications of the translator), if the child was born outside the United States.

C. The non-petitioning parent's last known address must be included in item 7 of the petition. If the non-petitioning parent is alleged to be deceased, a certified copy of the death certificate shall be attached to the petition or submitted at the hearing. If the location of a non-petitioning parent is unknown, he/she may be served by publication of the Notice of Hearing to Non-Petitioning Parent in accordance with Code of Civil Procedure section 415.50. An application for order for publication may be submitted ex parte. An affidavit/declaration of diligent search, Notice of Hearing to Non-Petitioning Parent, and Order for Publication must accompany the application. (See Code of Civil Procedure 415.50)

(Adopted effective July 1, 1992)

CHAPTER 8
ACCOUNTS, COMPENSATION AND DISTRIBUTIONS

608.01 Required Form of Accounts for Decedent's Estates and Trusts

All accounts filed in a decedent's estate or in a trust must comply with all the requirements of Probate Code sections 1061, 1062, 1063 and 1064. The account also must comply with CRC rules 7.550, 7.551, 7.552 and 7.901.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.02 Required Form of Accounts for Conservatorships and Guardianships

All accountings in conservatorships and guardianships must comply with CRC 7.575.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.03 General Information on Compensation

The court prefers to determine the amount of compensation in decedents' estates, guardianships, conservatorships, and trusts at the time an account is considered. In any request for compensation, petitioner must comply with the applicable rules in Title Seven of the California Rules of Court.

In any request for compensation, no more than five pages of detailed time records may be attached as an exhibit. In requests for compensation based on complicated or intricate cases, counsel may wish to lodge detailed time materials with the court for review. For example, handwritten logs kept by conservators of time spent should be summarized in the report that will be a part of the permanent court file, and the logs in excess of five pages may be lodged for review. Similarly, time records of a personal representative or counsel should be summarized in a petition for compensation; detailed materials in excess of five pages may be lodged for review but normally should not be filed. (See Rule 601.03)

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.04 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

608.05 Request for Compensation in Estates Administered under Independent Administration of Estates Act

Petitions in which compensation is requested for extraordinary services shall expressly state whether the estate is being administered under the Independent Administration of Estates Act. The court may inquire whether and to what extent the administration under the Act simplified or reduce (or reasonably should have simplified or reduced) the efforts of the personal representative and attorney, and such information shall be taken into consideration in the determination of compensation that will be allowed for extraordinary services.

(Adopted effective July 1, 1992)

608.06 Request for Compensation in Decedents' Estates Lacking Cash for Payment

The Court will not order full payment of compensation if there is insufficient cash in the estate. The Court will allow and approve compensation - but only award and order them paid to the extent there is cash on hand to do so. If heirs or devisees wish to have property distributed in kind when there are insufficient liquid assets in the estate, they may advance funds to the estate. The advancement should be shown as a miscellaneous acquisition of property (Schedule C), and this sum should be excluded in calculating any statutory compensation.

(Adopted effective July 1, 1992)

608.07 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

608.08 Creditors' Claims

Each report or account submitted by a personal representative filed more than four months after issuance of letters shall contain an allegation that notice of administration has been given to each known or reasonably ascertainable creditor who has not been paid.

If any debt was paid without a claim having been filed or presented, the report must contain the allegations required by Probate Code sections 9154 and 11005. A separate schedule specifying the debts paid with and without formal claims may be appropriate. The foregoing information about claims must appear in the final report even though it may have appeared in whole or in part in prior reports.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.09 Administration Costs

A final account will not be approved and petition either for final distribution or to terminate proceedings will not be granted unless the court is satisfied that all costs of administration, including charges for legal advertising, bond premiums and probate referees' fees have been paid.

(Adopted effective July 1, 1992)

608.10 Taxes

Each petition for final distribution of a decedent's estate must contain an allegation that all personal property and income taxes that are due and payable have been paid. In addition, they must disclose whether a federal or California estate (and generation-skipping transfer) tax return is required, and whether there is a need for an order or orders prorating such tax or taxes under Probate Code section 20100 et seq.

This section applies to a distribution to a non-resident trustee, notwithstanding the residence of the beneficiaries.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.11 Health Care Benefits

Each report of administration of a decedent's estate must contain an allegation either that a notice of death has been provided to the Director of Health Services as required by Probate Code sections 215 and 9202 or that no such notice is required. (See Welfare & Institutions Code section 14009.5)

(Adopted effective July 1, 1992)

608.12 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

608.13 Election by Spouse to Submit Property to Administration

Any election by the surviving spouse to submit property to administration under Probate Code sections 13502-13503 must be on file before the hearing on a petition to distribute the affected asset.

If the spouse requests to file an election after the four month period allowed by Probate Code section 13502(b) (which affects the decedent's property or the spouse's property or both), the Court will require a declaration from the spouse stating all of the following:

A. the reason for the late request;

B. that the spouse is aware of any resultant additional fees and costs; and

C. whether there are any creditors of the decedent who have not presented or filed claims (including any which are disputed or contingent).

If there are any claims, the request for authority to file a late election must be set for hearing and all creditors given 15 days mailed notice of hearing together with a copy of the petition.

(Adopted effective July 1, 1992)

608.14 Disclaimers

A copy of any disclaimer must be on file prior to the hearing of any petition for distribution of any affected asset.

(Adopted effective July 1, 1992)

608.15 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

608.16 Distributions to Assignees

If the personal representative has any reason to believe that a beneficiary has assigned an interest in the estate (other than to a trust revocable by the beneficiary) or that distribution will be made to any other transferee or attorney in fact, the representative may wish to seek specific court approval in the petition for final distribution under Probate Code section 11604.

(Adopted effective July 1, 1992)

608.17 Notice to Trust Beneficiaries

If a petition for distribution seeks the appointment of a trustee, the court will require notice to all vested and contingent beneficiaries in being. (See Rule 612.02, infra.)

See Rule 602.06 for notice requirements if a personal representative presents a report, account, or petition that affects the beneficiary of a trust of which the personal representative is the sole trustee.

(Adopted effective July 1, 1992)

608.18 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

608.19 Orders Dispensing with Accounts in Guardianships and Conservatorships

If a guardianship or conservatorship estate meets the requirements of Probate Code section 2628, a petition to waive accounts should be submitted. Orange County Form L-890 is available and may be used to make ex parte petition.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.20 Completeness of Petitions, Accounts and Orders

Each account, report of administration, and petition for final (but not necessarily preliminary) distribution must identify all assets on hand (including cash) at the end of the accounting period or at a specified date reasonably close in time to the date a report or petition

not accompanied by an account is presented to the court. However, complete legal descriptions need only be included when distribution is requested.

Unless any interested party requests a different allocation by the court under Probate Code section 11624, the cost of each proceeding for a preliminary distribution shall be borne by the estate. The allocation of the cost of the proceeding must be included in the order.

If a reserve is requested, the use of property reserved must be specifically described (income taxes, transfer taxes, closing costs, etc.).

In orders settling accounts, it is proper to use general language approving the account and report and the acts reflected therein, but such orders may not merely recite that the petition as presented is granted. Orders approving and/or settling reports and/or accounts must also identify the assets on hand, specifically noting the amount of cash and cash equivalents (such as certificates of deposit) included in the balance. For example: "The personal representative has in his/her possession belonging to the estate, after deducting the credits to which he/she is entitled, a balance of property on hand in the amount of $_____, of which $_____, of which is in cash and/or cash equivalent.

An order and decree of distribution must be complete in itself. (See Rule 601.13) The property distributed to each distributee should be listed and set forth in detail. The description of any real property (including a security interest) must include the complete legal description and then street address or other commonly used mode of identification. If an omnibus clause is included for after discovered property, it must specifically state to whom the property will be distributed and in what proportions.

If property is to be distributed, the order and decree of distribution or order settling the final account in a guardianship or conservatorship should state that the personal representative, guardian or conservator shall be entitled to discharge upon filing receipts of distributees and submitting an Affidavit or Declaration for Final Discharge (Orange County Form 105.3).

(Adopted effective July 1, 1992; revised effective July 1, 2008)

608.21 Documents to Be on File before Hearing on Petition for Distribution

The court will require the following documents to be on file before making an order for distribution:

A. If distribution is to be made to the guardian of a minor, a certified copy of the letters of guardianship;

B. If distribution is to be made to a parent for the benefit of a minor under Probate Code section 3401, a copy of he written assurance of such parent;

C. If distribution is to be made for the benefit of a minor under Probate Code section 3410 et seq., a separate petition and order under the minor's name with a different case number is required. A copy of such order must be filed in the decedent's estate proceeding;

D. If distribution is to be made to a person collecting assets under Probate Code section 13100 or 13200, the required affidavit or declaration under penalty of perjury of such person. If distribution is to be made to a person pursuant to a court order made under Probate Code section 13150, et seq., or 13650, et seq., a copy of the order;

E. If distribution is to be made to the person representative of the estate of a deceased beneficiary, a certified copy of the representative's letters;

F. If distribution is to be made to a testamentary trustee, the consent of the trustee to act;

G. If distribution is to be made to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act (Probate Code section 3900 et seq.), the written notice of acceptance of the office contemplated by Probate Code section 6347(b) by the custodian; and

H. If preliminary distribution under Probate Code section 11620 or 11623 is requested, the inventory and appraisal listing each asset to be distributed.

(Adopted effective July 1, 1992)

608.22 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

CHAPTER 9
JOINT TENANCIES AND LIFE ESTATES

609.01 Proceedings Must Be in Name of Decedent

A petition to establish fact of death must be filed in a proceeding in the name of the deceased person whose interest is being terminated.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

609.02 Separate Petition Preferred

Sections 201 and 202 of the Probate Code authorize a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. Whenever possible, attorneys are encouraged to file separate petitions under the same number in order to avoid procedural difficulties. A petition may not be filed in the estate proceeding after the filing of a petition for final distribution. A petition to establish fact of death which is filed after a petition for final distribution must be filed in a new proceeding under a new case number.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

609.03 Hearings

Under section 203 of the Probate Code, the court can make an ex parte order establishing the fact of a joint tenant or life tenant if the petitioner executed an affidavit stating the petitioner has no reason to believe that there is any opposition to, or contest of, the petition.

(Adopted effective July 1, 1992)

609.04 Inventories Unnecessary

It is not necessary to list joint tenancy assets or assets subject to a life estate in the form of an inventory and appraisal, as in the case of assets subject to a probate administration proceeding. Assets should be described in the petition for decree establishing fact of death or in an exhibit thereto and made a part thereof.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

609.05 Attorney Fees

There is no provision in the Probate Code for determination by the Probate Court of attorney's fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character shall be included in any petition for fees in a probate estate matter, and, if so included, will not be granted. However, where the termination of a joint tenancy with a previously deceased joint tenant is necessary to clear title to property in the decedent's estate, a fee for extraordinary services may be proper in the probate estate matter.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

CHAPTER 10
GUARDIANSHIPS

610.01 Consolidation of Adoption and Guardianship Proceedings

If an adoption proceeding is pending involving a minor who is also the subject of a petition for guardianship, the proceedings will be consolidated and heard in the department designated by the presiding judge to hear consolidated adoption/guardianship proceedings.

(Adopted effective July 1, 1992)

610.02 Appointment of Temporary Guardian

For procedures for applying for appointment of a temporary guardian, go to www.occourts.org, click on Probate, and then click on ex parte procedures. If a petitioner wishes to apply to waive or shorten notice for appointment of a temporary guardian, the

petitioner must follow CRC rule 7.1012.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.03 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

610.04 Appointment of General Guardian

Petitions for appointment of general guardians are set on calendar for hearing, and the appearance of the proposed guardian and counsel are required. The court does not favor waiver of statutory notice on the appointment of a general guardian of a minor. However, the court can dispense with notice if sufficient grounds are given to justify an allegation that notice prescribed by Probate Code section 1511 cannot be given with reasonable diligence, or that the giving of such notice is contrary to the interests of justice. In all cases the court will require nomination or consent of a minor if such minor is fourteen years of age or older and if such minor has the capacity to nominate.

When a petition seeks the appointment of a non-petitioning guardian, a consent to serve as guardian must be filed for each non-petitioning proposed guardian.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.05 Waiver of Investigation and Report

When a petition requests appointment of a guardian of the estate only, the investigation otherwise required by Probate Code section 1513 is waived, and no guardianship investigation fee is required.

(Adopted effective July 1, 1992)

610.06 Vacated

(Revised effective September 1, 1998; repealed effective July 1, 2008)

610.07 Guardianship of the Person - Investigation Fees

When a petition requests appointment of a guardian of the person, a nonrefundable guardianship investigation fee based upon the actual cost of the investigation as set forth in the statute and current fee schedule must be paid to the clerk in addition to the regular filing fee. (Probate Code section 1513.1)

(Revised effective October 1, 1993)

610.08 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

610.09 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

610.10 PETITIONS FOR APPOINTMENT OF NON-PROFIT CORPORATIONS AS GUARDIANS OF MINORS

In addition to the usual allegations in a petition for appointment of a guardian of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code section 2104.

(Adopted effective July 1, 1992)

610.11 Duties of Guardian—Liability of Parents to Support Child

As parents are required by statute to support their children, the court will not permit guardianship funds to be used for the minor's maintenance and support where one or both parents are living, except upon a showing of the parent's financial inability (supported by the Judicial Council Form Income and Expense Declaration) or other circumstances which would justify the court in departing from this rule in the best interests of the minor.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.12 Guardians' Accounts

All accounts filed in guardianship cases must comply with CRC rule 7.575.

Private professional guardians are to file original financial account statements as required in Probate Code section 2620(c)(3).

After examination and becoming part of the court's electronic record, pursuant to Government Code 68150, the original documents will be returned to the submitting party. The court will retain the documents in electronic form only. The private professional must file the bank and financial records separate from the guardian accounting. The caption shall state "Private Professional Bank and Financial Records per Probate Code section 2620(c)(3)" and the date, time and department of the hearing. The private professional guardian must submit with the records a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The private professional guardian must retain the originals until the order approving the final account is final.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.13 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

610.14 Additional Independent Powers

The court may, on the petition of the guardian, either at the time of appointment or later, grant additional independent powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each section 2591 power requested the facts and reasons which justify the independent exercise of the power. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of guardianship.

(Adopted effective July 1, 1992)

610.15 Bonds of Guardians

All petitions for a reduction of bond must be filed, set for hearing, and noticed pursuant to Probate Code section 2329 except as provided in Probate Code section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.06)

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.16 Investments by Guardian

The standard set forth in section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by guardians. The guardian should also consider the circumstances of the estate, indicated cash needs, and the date of prospective termination of the guardianship. The Probate Court does not act as an investment counselor but suggests that the investments by guardians should be prudent and in keeping with the size and character of the ward's estate. Investments in existence at the time of the creation of the guardianship usually may be maintained, subject to the provisions of section 16048 of the Probate Code. Investments other than as provided in Probate Code section 2574 require court authorization unless the guardian is empowered to so act pursuant to Probate Code sections 2590 et seq.

The court will not ordinarily approve the investment of the ward's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the ward's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investment in real estate, either by purchase or encumbrance, usually will not be granted unless supported by an M.A.I. appraisal.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

610.17 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

610.18 Deceased Wards - Liquidation of Estate

Petitions and orders under Probate Code section 2631 for authority to liquidate the estates of deceased wards must be submitted on Orange County Form 904.

(Adopted effective July 1, 1992)

610.19 Attorneys Appointed for Wards or Proposed Wards

The court is aware that, for attorneys appointed to represent wards or proposed wards, the prospect of future employment by the guardian might create situations which could lead to violation of Rules 3-110 and 3-310 of the Rules of Professional Conduct. Actual employment by a guardian after representation of the ward or proposed ward presents a high risk of violation of Rule 3-310 (d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent wards or

proposed wards, pursuant to section 1470 of the Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the guardian in the same guardianship.

(Adopted effective July 1, 1992)

CHAPTER 11
CONSERVATORSHIPS

611.01 Appointment of Out-of-State Conservators

Generally, the court will not appoint an out-of-state conservator unless sufficient facts exist to support a finding that the appointment is in the best interests of the conservatee.

(Adopted effective July 1, 1992)

611.02 Appointment of Temporary Conservator

For procedures for applying for appointment of a temporary conservator, go to www.occourts.org, click on probate and click on ex parte procedures. If a petitioner wishes to apply to waive or shorten notice for appointment of a temporary conservator, the petitioner must follow CRC rule 7.1062.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.03 Appointment of General Conservator

All petitions for appointment of conservator must state if whether there is presently a conservator appointed under the Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code, Part I of Division 5 beginning with section 5000). If an LPS conservatorship exists, notice must be given to the LPS conservator and counsel representing the LPS conservatee.

When the proposed conservatee is, or was, the subject of a guardianship, the petition must include the case number of the prior guardianship, the name of the prior guardian(s), and the names of the attorneys for the prior guardian or ward.

When the petitioner, or the proposed conservator, also serves as the Trustee of a Trust in which the conservatee has a beneficial interest, the existence of the Trust, and the petitioner or proposed conservatee's status and interest in the trust, must be disclosed in the petition.

In any case in which the petitioner requests dismissal of a petition for the appointment of a general conservator or successor conservator or to have a petition placed off calendar, a declaration by the petitioner in support of the request must be filed with the court stating:

A. The change in circumstances which has occurred since the filing of the petition which has eliminated the need for a conservatorship;

B. Any transfers of property by the proposed conservatee since the filing of the petition (including, but not limited to, purchases, sales, gifts and declarations of trust), or, in the alternative, a statement that no single such transaction by the conservatee exceeded $500.00, and the aggregate of such transactions during the period did not exceed $3,000.00; and

C. Any assets marshaled by the temporary conservator, and any transfers of conservatorship assets (including, but not limited to, purchases, sales, gifts and declarations of trust) by the temporary conservator.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.04 Petition for Appointment of Non-Profit Corporations as Conservators

In addition to the usual allegations in a petition for appointment of a conservator of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code section 2104.

(Adopted effective July 1, 1992)

611.05 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

611.06 Capacity to Give Informed Consent for Medical Treatment

If a separate petition is filed concerning the capacity of a conservatee to consent to medical treatment pursuant to Probate Code sections 1880 et seq., the petition shall contain a statement that there is on file a current Notification to Court of Address form, or the petitioner shall file a current Notification to Court of Address form concurrently with the petition.

If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code section 1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

When the Court grants the conservator the exclusive authority to consent to medical treatment on behalf of the conservatee, such authority is subject to the following reservation and condition:

The conservator may not consent to the sterilization of the conservatee. [Such authority must be specifically sought under Section 1952 (developmentally disabled conservatees) or Section 2357 (all other conservatees) of the Probate Code. For required allegations, proof, and findings counsel are advised to consult In re Valerie N. (1985) 40 Cal.3d 143, 166-169]

All orders granting exclusive medical consent authority to a conservator and letters of conservatorship issued thereon shall contain the following condition:

The conservator may not consent to the sterilization of the Conservatee.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.07 Additional Independent Powers

The court may, on the petition of the conservator, either at the time of appointment or later, grant additional independent powers to the conservator as authorized by sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each section 2591 power requested the facts and reasons which justify the independent exercise of the power. Additionally, if the power to sell the conservatee's present or former personal residence is requested, the petition must state all of the information required under section 2540(b). The information required under section 2540(b) must be provided the first time the conservator seeks authority to list or sell the conservatee's present or former personal residence. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of conservatorship.

Where the power is granted to sell real property (thereby eliminating the need to publish notice of sale), the court ordinarily requires the sale to be returned to the court for confirmation.

(Adopted effective July 1, 1992)

611.08 Establishing Trusts for Conservatees

If a petition seeks authority to establish a living trust for the benefit of a conservatee with conservatorship assets, the court will require that the trust provide:

A. that the conservator of the estate (or, if none, of the person) shall have the power to amend or revoke the trust, subject to prior court approval;

B. that all fees awarded by the court to the conservator (person and/or estate) and the conservator's attorney shall be paid by the trustee if so ordered by the court;

C. that all costs assessed for visits by the Probate Court Investigator shall be paid by the trustee if so ordered by the court;

D. that the principal may be invaded for the benefit of the conservatee, and such power of invasion shall be construed liberally in favor of the conservatee; and

E. that during the lifetime of the conservatee the trustee shall file an account with the court every two years, and notice of hearing on the account shall be given in the same manner and for the same time as required in conservatorship accounts.

A copy of the proposed trust instrument must be attached to the petition. The terms of the trust, as authorized by the court, must be set forth fully in the order submitted after hearing.

If a petition seeks to transfer conservatorship assets to an already established living trust, the court will ordinarily grant such authority if that trust provides that the assets will be available for the support and maintenance of the conservatee during his or her life.

(Adopted effective July 1, 1992)

611.09 Bonds of Conservators

All petitions for reduction in bond must be filed and set for hearing and noticed pursuant to Probate Code section 2329, except as provided in Probate Code section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.08).

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.10 Investments by Conservators

The standard set out in section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by conservators. The Probate Court does not act as an investment counselor but suggests that the investments by conservators should be prudent and in keeping with the size and character of the conservatee's estate. Investments in existence at the time of the creation of the conservatorship usually may be maintained, subject to the provisions of section 16048 of the Probate Code. Investments other than as provided in Probate Code section 2574 require court authorization unless the conservator is empowered to so act pursuant to Probate Code section 2590, et seq.

The court will not ordinarily approve the investment of the conservatee's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the conservatee's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investments in real estate, either by purchase or encumbrance, will not be granted unless supported by an M.A.I. appraisal.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.11 Conservators' Accounts

All accounts filed in conservatorship cases must comply with CRC rule 7.575.

Private professional conservators are to file original financial account statements as required in Probate Code section 2620(c)(3). After examination and becoming part of the court's electronic record, pursuant to Government Code section 68150, the original documents will be returned to the submitting party. The court will retain the documents in electronic form only. The private professional must file the bank and financial records separate from the conservator accounting. The caption shall state "Private Professional Bank and Financial Records per Probate Code section 2620(c)(3)" and the date, time and department of the hearing. The private professional conservator must submit with the records a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The private professional conservator must retain the originals until the order approving the final account is final.

Where a conservator accounts for the assets of more than one conservatee, the accounting for each conservatee must be set forth separately.

The conservatee's current residence address should be set forth in each report or account filed.

Each report/final account of a conservator upon termination of the proceeding due to the conservatee's death must contain an allegation either that notice of the conservatee's death has been provided to the Director of Health Services as required by Probate Code section 215 or that no such notice is required. (See Welfare & Institutions Code section 14009.5)

The order submitted after hearing should, when appropriate, contain a direction to the conservator to pay the assessments imposed pursuant to section 1851.5 of the Probate Code to the Orange County Clerk, in care of Finance Division, P.O. Box 838, Santa Ana, California 92702. When containing a direction to pay, the order should state the dollar amount assessed. On current accounts where the court has found that the assessments would pose a hardship to the estate, the order submitted after hearing should contain such a finding and an order that the assessments not be paid except upon further court order.

Waivers of account will be accepted in the court's discretion only in the following instances:

A. When the proceeding is terminated by court order, and the conservatee thereafter waives an account; or

B. When the proceeding is terminated by death of the conservatee and either (1) there is no will and a written waiver is obtained from all of the conservatee's heirs; or (2) there is a will and a written waiver is obtained from the executor and the devisees under the will after the order admitting the will has become final; and (3) the time to present creditors' claims has expired and there is a representation by the estate representative that the estate is solvent. Waivers will be accepted only from heirs or devisees who are competent adults.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.12 Substituted Judgment

The party filing a petition for substituted judgment (Probate Code section 2580) must fully inform the court of all relevant circumstances. The petitioning party must use due diligence to inform the court of everything a reasonable person in the conservatee's position would have wanted to know before deciding whether or not a proposed action should be taken. See Conservatorship of Hart (1991) 228 Cal.App.3d 1244.

The Court may appoint counsel for the conservatee. The Court may also require the appointment of an expert to investigate, report or testify if it would be helpful to the Court's determination.

If the Court grants a petition for the exercise of substituted judgment, the order submitted after hearing must contain the findings required by Probate Code section 2582. See also Rule 611.08 for additional requirements relating to trusts.

(Adopted effective July 1, 1992)

611.13 Petitions to Terminate Conservatorship

When a petition seeks termination of a conservatorship, the court will ordinarily require the appearance of the conservatee at the hearing on the petition.

(Adopted effective July 1, 1992)

611.14 Death of the Conservatee

Within 30 days of the death of the conservatee, the conservator shall notify the court or cause the court to be notified of the death. Such notice need not be in any particular form but must:

A. be in writing;

B. be signed by the conservator or the conservator's attorney of record; and

C. state the date of death of the conservatee.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.15 Vacated

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.16 Deceased Conservatees—Liquidation of Estate

Petitions and orders under Probate Code section 2631 for authority to liquidate the estates of deceased conservatees must be submitted on Orange County Form L-903.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.17 Attorneys Appointed for Conservatees or Proposed Conservatees

The court is aware that, for attorneys appointed to represent conservatees or proposed conservatees, the prospect of future employment by the conservator might create situations which could lead to violation of Rules 3-110 and 3-310 of the Rules of Professional Conduct. Actual employment by a conservator after representation of the conservatee or proposed conservatee presents a high risk of violation of Rule 3-314(d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent conservatees or proposed conservatees, pursuant to sections 1470 or 1471 of the Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the conservator in the same conservatorship.

(Adopted effective July 1, 1992)

611.18 Vacated

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.19 Conservator's Handbook and Orientation Program

Each proposed conservator (other than a proposed temporary conservator) must attend an orientation program provided by the Court before the hearing date on the petition for appointment. The Conservator's Handbook must be purchased and taken to the orientation program.

These requirements must be met before the hearing date and proof of compliance must be filed no later than five court days before the scheduled hearing on the petition for appointment of a general or limited conservator.

Failure to meet these requirements may result in the petition for appointment being ordered off calendar if the person has not been appointed temporary conservator. If a temporary conservator fails to attend the orientation program, the conservator and counsel must attend the hearing on the petition for appointment of the general or limited conservator. Failure of the temporary conservator to attend the hearing may result in suspension of the temporary conservator's powers and issuance of citation to compel appearance.

At the hearing the temporary conservator must show good cause why the temporary conservator failed to attend the orientation program. Lack of planning to attend, inconvenience, being too busy, and the like, do not constitute good cause. Unless good cause is shown the Court will ordinarily consider terminating the temporary conservatorship, ordering the petition for appointment of

general or limited conservator off calendar, and making other appropriate orders.

The Public Guardian, corporate fiduciaries, banks and other entities authorized to conduct the business of a trust company are exempt from these requirements. All other proposed conservators, including private professional conservators, must meet these requirements once. While each proposed conservator must only purchase one handbook and attend one orientation program, proof of compliance must be timely submitted in each case where appointment is sought.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

611.20 Visitation

The Court expects a conservator to visit the conservatee with sufficient frequency to assure that the conservatee's needs are being met. The frequency of visitation will vary depending on the conservatee's living situation and needs. If the conservatee is living in a skilled nursing facility the court expects the conservator to visit at least once a month. The plan for visitation should be included in the general plan together with an explanation of why the proposed frequency of visitation is appropriate.

(Adopted effective July 1, 1992)

CHAPTER 12
REPEALED

612.01 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

612.02 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

612.03 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

CHAPTER 13
BLOCKED ACCOUNTS IN GUARDIANSHIPS, CONSERVATORSHIPS, DECEDENT'S ESTATES AND TRUSTS

613.01 Forms

Orange County forms are available in connection with blocked accounts and must be used where applicable. The forms are described below:

Deposit of Minor's Funds		
A.	Petition for Order Re Deposit of Money Belonging to Minor [Probate Code Sections 3410 et seq.] (Probate Department).	*735*
B.	Order Re Deposit of Minor's Funds [Probate Code Sections 3412(a) and 3413(a)] (Probate Department—Ex Parte)	*738*
C.	Order to Deposit Money and Receipt of Depository (Minor).	880
Transfer of Minor's Funds		
D.	Ex Parte Petition for Order Re Transfer of Money Belonging to Minor and Order	*754*
Deposit of Decedent, Conservatee's Funds		
E.	Order to Deposit Money and Receipt of Depository (Probate Department—Decedent or Conservatee).	*732*
Withdrawal of Funds (Minor, Decedent, Conservatee, Trust)		
F.	Petition for Authority to Withdraw Funds Deposited Pursuant to Court Order (Minor, Conservatee or Deceased)	69
G.	Order for Withdrawal (Minor, Conservatee or Deceased).	153

(Revised effective July 1, 1993; revised effective July 1, 2008)

613.02 General Information on Blocked Accounts

A. Notice of Hearing

If the petition merely seeks the deposit of funds or the deposit of funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorneys' fees (or other items) are sought, the matter may be set by the court for hearing on calendar, in which case, the clerk will notify the attorney, or, if there is no

attorney, the petitioner of the hearing date and time. Upon such notification, such person shall give mailed notice of the hearing and proceeding to all interested persons at least 15 days before the date of the hearing and submit proof of service thereof no later than 4:00 p.m. four court days prior to the hearing.

B. Title to Account

The title to any blocked account shall show the name of the minor, conservatee or estate.

C. Account Requirements

All deposits into blocked accounts shall be into federally insured, interest bearing accounts having no maturity date unless otherwise ordered by the court. If funds are to be placed in an account having a maturity date, the applicant and counsel are cautioned that sufficient funds should be maintained in another account to pay reasonably foreseeable expenses, such as taxes, without incurring penalties or loss of interest.

D. Maximum Amount in Blocked Account

The maximum initial deposit into any one blocked account shall be Ninety Thousand Dollars ($90,000). In no event shall more than One Hundred Thousand Dollars ($100,000) be held in any one federally insured depository. If it is necessary to transfer funds to an additional federally insured depository to comply with this rule, a petition to transfer funds (such as Form 754) shall be submitted.

E. Withdrawals

Except in the case where a minor becomes an adult and the order for deposit provides for automatic withdrawal by the minor upon attaining majority, no withdrawals of principal or interest shall be made without the prior written order of the court. (See Rule 613.04 for minors who attain majority.)

A certified copy of the court's order bearing the impression seal of the court must be submitted to the depository at the time of withdrawal and the certified copy will be retained by the depository. Only one certified copy of the order for withdrawal will be provided by the court. A copy of the order to be certified and the certification fee should be submitted with the petition and order, together with the copies requested to be conformed.

F. Depository Receipts

The orders for deposit (Forms 732 and 880) are quadruplicate forms, the original of which will be signed by the court and filed. The remaining three copies will be returned to the attorney or applicant for delivery to the depository. The branch manager or office of the depository must sign the receipt on the blue copy and return it to the court, present the white copy to the attorney or applicant, and retain the yellow copy.

All depository receipts of depository must be completed by the depository and the blue copy filed with the court within 30 days of the date that the order for deposit is signed. If the receipt is not on file by that date and no extension of time has been granted, the applicant will be cited to appear before the court. In addition to the court's other remedies, sanctions pursuant to Code of Civil Procedure section 177.5, not to exceed fifteen hundred dollars ($1,500), may be imposed if funds are not deposited as required. Requests for an extension of time should be made by ex parte written application submitted prior to 4:30 p.m. on the day which is two court days before the end of the 30 day period.

G. Separate Petitions and Blocked Accounts for Each Minor

A separate petition must be filed for each minor whose funds are to be deposited in a blocked account. A separate blocked account shall be established for the funds of each minor.

(Revised effective July 1, 1993; revised effective July 1, 2008)

613.03 Deposit of Minors' Funds in Blocked Accounts (No Guardianship Estate)

To obtain an order for the deposit of a minor's funds in a blocked account, Form No. 735 should be submitted with Form No. 738 and Form No. 880, all of which should be completed and signed by the applicant.

If the applicant has reason to believe the minor will be unable to manage his or her own financial affairs upon attaining majority because of mental or physical incapacity, the applicant should file a verified declaration with the petition explaining the situation. The court may strike the language in the orders requiring automatic release to the minor upon attaining majority.

(Revised effective July 1, 1993)

613.04 Withdrawal of Funds of Former Minor Now 18 Years or Older

If the court order establishing the blocked account states the funds are to be paid by the depository without further order of the court to the former minor when the former minor reaches the age of majority, the depository may pay the funds directly to the former minor without further court order. If the depository requires a certified copy of such order, the amount of the certification

fee (together with a copy of the order, request for certification, and a stamped, self-addressed envelope) should be sent to the Probate Division of the Clerk's Office.

If the court order establishing the blocked account does not provide for payment to the former minor without further court order, or if the depository requires a new order for withdrawing the funds, a completed Form 69.4 and Form 153.4 should be submitted. The petition must be signed by the former minor and the former trustee/guardian and it must be verified by the former minor. If the funds were deposited in a guardianship, the attorney of record must also sign the petition. If the applicant cannot locate the attorney through local directories, the applicant should contact the membership section of the California State Bar. If the attorney's signature cannot be obtained, a declaration of explanation should be submitted.

The forms should be submitted with a certified copy of the birth certificate (or the former minor may appear with a valid California driver's license) and either:

A. an updated savings passbook or statement showing all entries since the account was opened; or

B. a letter from the depository identifying the account and setting forth the dates and amounts of all withdrawals and the current balance.

A certified copy of the order should be submitted to the depository. To obtain a certified copy, the amount of the certification fee (together with a stamped, self-addressed envelope) should be sent to the Probate Division of the Clerk's Office.

(Adopted effective July 1, 1992)

613.05 Withdrawals during Minority

All requests for withdrawal of minors' funds held in blocked accounts (including funds deposited pursuant to orders compromising minor's claims) shall be made by petition (Form 69.4) to the probate court. Requests for withdrawals may be presented ex parte. In all cases, whether or not set for hearing, sufficient documentation to support the request must be submitted with the petition.

In addition to the trustee/guardian, minors age 14 or over must sign and date the petition or an explanation for the absence of the minor's signature must be provided.

Except for withdrawals to pay taxes on a minor's funds, orders for withdrawals will ordinarily not be granted if either or both parents are living and financially able to pay the requested expenditure. Except for petitions for withdrawals to pay taxes, a financial declaration by the parents or parent describing their income and expenses must be attached to the petition.

A statement regarding the minor's employment and income, if any, must be attached.

Copies of bills, statements or letters related to the request must be attached to the petition.

For requests for payments of taxes on the minor's funds, copies of the applicable tax returns must be submitted separately with the petition but should not be attached to the petition.

If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement must be attached to the petition showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement should not be entered into before obtaining a court order as the petition may be denied. In addition, a casualty insurance quote must be attached to the petition showing that the minimum public liability coverage equals or exceeds the funds which will remain on deposit after the purchase, and the petition must contain an explanation of who will pay for the insurance.

If the request for withdrawal pertains to medical care or an accident or other casualty, an explanation as to why the expense is not covered by insurance must be included.

If the request is for reimbursement for an expense already paid, proof of payment (i.e. canceled check or receipt) must be attached to the petition.

(Adopted effective July 1, 1992)

613.06 Deposit of Funds of Guardianship Estate in Blocked Account

A request to deposit funds of a guardianship estate in blocked accounts may be included in the petition for appointment or made by subsequent petition for the purpose of reducing bond. Form 880, completed and signed by the applicant, should be submitted along with the order granting the petition before the court.

If the applicant has reason to believe the minor will be unable to manage his or her own financial affairs upon attaining majority because of mental or physical incapacity, the applicant should file a declaration with the petition explaining the situation. The court may strike the language in the order requiring automatic release to the minor upon attaining majority.

If a minor's estate consists of money only, a guardian of the estate may not be necessary as the funds may be deposited in blocked accounts as set forth in Rule 613.03. However, where a guardian of the estate has been appointed, the deposit of funds of the

guardianship estate into blocked accounts does not relieve the guardian of his or her duty to file the inventory. The guardian must file accounts unless the Court has made an order dispensing with accounts pursuant to Probate Code section 2628. If the minor's estate consists entirely of funds which can be deposited in blocked accounts, the guardian may wish to terminate the guardianship of the estate.

(Revised effective July 1, 1993)

613.07 Withdrawal of Guardianship Estate Funds from Blocked Account

For the withdrawal of funds of a guardianship estate from a blocked account, the procedures described in Rules 613.04 and 613.05 are to be followed. In addition the guardian's attorney of record should also sign the petition.

(Adopted effective July 1, 1992)

613.08 Deposit of Decedent's or Conservatee's Estate Funds in Blocked Account

A request to deposit a decedent's or a conservatee's funds in blocked accounts may be included in the petition for the appointment or made by subsequent petition for the purpose of reducing bond. Form 732 completed and signed by the applicant should be submitted along with the order granting the petition before the court.

(Adopted effective July 1, 1992)

613.09 Withdrawal of Decedent's or Conservatee's Estate Funds from Blocked Account

Form 69.4, completed and signed by the applicant should be submitted along with Form 153.4. A certified copy of the order is to be submitted to the depository. To obtain a certified copy, send the amount of the certification fee with a stamped, self-addressed envelope to the Probate Division of the Clerk's Office.

(Adopted effective October 1, 1985; revised eff. September 1, 1986; revised eff. January 1, 1988; revised eff. February 10, 1989; revised eff. August 28, 1989; revised eff. July 1, 1992)

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Placer County
Probate Policy Manual

Effective January 1, 2010

RULE 80.00 PROBATE
[Effective date 7/1/07]

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80.5 TRUST MATTERS [Effective date 7/1/07]

80.1 GENERAL PROBATE RULES

80.1.1 SCOPE OF RULES

A. Except as specifically provided in this chapter, the Local Rules found in Chapters 10.0 et. seq. and 20.0 et. seq. apply to all probate, conservatorship, and guardianship proceedings.

[Effective date 7/1/07]

80.1.2 TELEPHONIC APPEARANCES

A. A party or counsel for a party may appear and present oral argument by telephone on matters pending before the court only with prior approval of the court department in which the matter is pending. Except upon good cause shown, no appearance by telephone will be permitted by any party or counsel whose home or office address is within 50 miles of Auburn. Any such telephonic appearance will be scheduled at such time as the court may designate. [Effective date 7/1/07]

B. A party or counsel requesting a telephonic appearance in probate, conservatorship, or guardianship matters shall so indicate in the moving or responding papers by specifying in the caption, "TELEPHONIC APPEARANCE REQUESTED." The telephone number at which the requesting party can be reached on the scheduled hearing date shall also be provided and cannot be a cell phone number. The request for telephonic appearance will be ruled on in the calendar notes. If telephonic appearance is granted, the court will contact the attorney or party appearing by telephone at the time the matter is ready to be heard.

[Effective date 7/1/07]

80.1.3 NON-STIPULATIONS TO COMMISSIONER

A. When a regularly scheduled probate, conservatorship, or guardianship calendar is heard by a Commissioner, the parties must file written notice indicating whether or not they stipulate to the Commissioner. Failure to file such notice of stipulation or non-stipulation at least five court days prior to the hearing date for the matter will be deemed a stipulation to the Commissioner for all purposes other than trial.

[Effective date 7/1/07]

80.1.4 CALENDAR NOTES

A. Calendar notes will be available on the court's web site not less than 4 court days prior to the hearing. The calendar notes will state when an appearance is required and what the procedural status of the case is.

[Effective date 7/1/07]

80.1.5 DOCUMENTS SUBMITTED IN RESPONSE TO CALENDAR NOTES

A. Any documents submitted in response to calendar notes shall be filed and served at least two court days prior to the hearing date.

[Effective date 7/1/07]

80.1.6 OBJECTIONS

A. Any objections or oppositions to petitions or applications set for hearing must be filed and served at least two court days prior to the hearing date.

[Effective date 7/1/07]

80.1.7 CONTINUANCES

A. Any request to continue a hearing date made less than five court days prior to the hearing date must be approved by the probate examiner.

[Effective date 7/1/07]

80.2 DECEDENT'S ESTATES [Effective date 7/1/07]

80.2.1 WILLS CONTAINING DISTRIBUTIONS TO A TRUST

A. When a Petition to Administer Estate seeks to admit to probate a will which contains distributions to a trust, notice to all trustees, successor trustees, beneficiaries, and contingent beneficiaries of the trust must be given of the Petition to Administer Estate. A properly authenticated copy of the trust must also be filed with the Petition to Administer. In lieu of filing a copy of the trust, a declaration under penalty of perjury from a party or counsel may be filed stating who the trustees, successor trustees, beneficiaries and contingent beneficiaries of the Trust are.

[Effective date 7/1/07]

80.2.2 ATTESTATION CLAUSES

A. If the attestation clause of any will sought to be admitted to probate does not contain language stating that the testator "was not acting under duress, menace, fraud, or undue influence," or language substantially similar thereto, a proof of subscribing witness must be filed in order to prove the will.

[Effective date 7/1/07]

80.3 CONSERVATORSHIPS [Effective date 7/1/07]

80.3.1 REVIEW HEARINGS

A. Notice of all review hearings and accountings must be provided to the court investigator at least fifteen (15) calendar days prior to the hearing date to assist in timely obtaining the court investigation report. The address of the Court's investigator is: 2433 Front Street, West Sacramento, CA 95691.

[Effective date 7/1/08]

80.3.2 PETITIONS SEEKING DEMENTIA ORDERS

A. If a Petition to Appoint a Conservator of the Person seeks orders related to dementia treatment or placement under Probate Code Section 2356.5, Petitioner shall file an ex parte application to appoint counsel for the conservatee, along with a proposed order which leaves the name and address of the court appointed counsel blank, at the time the Petition is filed.

[Effective date 7/1/07]

80.3.3 LIMITED CONSERVATORSHIPS

A. When a Petition to Appoint a Limited Conservator is filed, Petitioner shall file an ex parte application to appoint counsel for the conservatee, along with a proposed order which leaves the name and address of the court appointed counsel blank, at the time the Petition is filed.

[Effective date 7/1/07]

80.4 GUARDIANSHIPS [Effective date 7/1/07]

[Reserved.]

80.5 TRUST MATTERS [Effective date 7/1/07]

[Reserved.]

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Plumas County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Riverside County
Probate Rules

Effective January 1, 2010

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SECTION XIII
[(RESERVED)]

SECTION XIV
MISCELLANEOUS

6.1401 WITHDRAWAL OF ATTORNEYS OF RECORD

6.1402 FEES OR COMMISSIONS TAKEN IN ADVANCE

6.1403 (DELETED 7-1-89)

6.1404 (DELETED 1-1-90)

SECTION XV
OTHER PROTECTIVE PROCEEDINGS—MINORS AND CONSERVATEES

6.1501 (DELETED 7-1-89)

6.1502 PROCEEDING UNDER PROBATE CODE SECTION 3411

6.1503 REQUESTS FOR WITHDRAWAL OF IMPOUNDED FUNDS

6.1504 AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

6.1505 COMPROMISE OF DISPUTED CLAIMS—SPECIAL NEEDS TRUSTS

TITLE 6
CIVIL—PROBATE

SECTION I
GENERAL PROCEDURE AND POLICY

6.0101 PLEADINGS AND PAPERS

A. Form

l. Rule 201 of the Rules for the Superior Courts adopted by the Judicial Council shall apply to all probate filings.

2. All exhibits shall be typewritten or printed, or prepared by a photocopying or other duplication process that will produce clear and permanent copies equally legible to printing.

B. Caption of Petitions

l. The caption of petitions must be all-inclusive as to the nature of the petition and relief sought so that the matter may be properly calendared and noticed and filing fees, if any, determined. LPS cases shall indicate "W&I" after the case number.

2. Attorneys are encouraged to use subheadings in the body of the petition, particularly for required allegations.

3. All petitions, applications, reports, or accounts being filed in probate proceedings, which are not prepared on the form approved and required by the Judicial Council of California, shall bear pertinent code citation(s) beneath the nature or title of the paper.

4. All documentation pertaining to a hearing shall be filed with the Clerk at least three (3) days before the hearing. Failure to comply with this rule will be cause for a continuance.

5. All pleadings and orders shall include in the caption the date, time and department of the matter heard or shall provide a space for the Clerk to insert this information.

C. Proposed Orders Proposed orders or judgments in proceedings scheduled on the regular probate calendar should be presented to the Clerk's Office upon the filing of the petition.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 3-16-91, effective 7-1-91; amended 4-4-92, effective 7-1-92; amended 4-28-06, effective 7-1-06)

6.0102 CONSOLIDATION WITH LOWEST NUMBER

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0103 HEARINGS

A. General Probate.

1. To the extent practicable, probate matters which require a hearing will, upon being filed with the Court, be set by the Clerk for hearing within statutorily prescribed time periods. For a good cause shown, by oral or written application of petitioner, the Court may authorize the Clerk to assign an earlier hearing date.

2. Unless the will (and codicil or codicils, if applicable) shall have previously been deposited with the clerk for safekeeping, same shall be filed with the petition for probate unless a judge shall order otherwise.

B. Contested Matters.

l. Contested matters normally will not be heard on the daily calendar. Attorneys shall either (1) appear at the time scheduled for hearing, advise the Probate Judge of the contest, obtain a trial date from the Probate Judge; or (2) obtain a trial date from the Probate Judge in advance of the time scheduled for hearing.

2. As to will contests, trial and pre-trial rules of the Court, if any, shall apply. Counsel should inquire of the trial judge if any rules are applicable to that department.

C. Time Limits.

1. It is the practice of this Court to enforce Probate Code time limitations for the filing of inventory and appraisals, accountings, petitions for distribution and other required acts by the issuance of orders to show cause re suspension of powers and for imposition of monetary sanctions, as against either or both the attorney and the personal representative.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.0104 APPROVED MATTERS AND APPEARANCES

The Probate Examiner will ordinarily review the daily probate calendar approximately ten (10) days in advance of the date of hearing, and shall indicate thereon those matters which, procedurally and jurisdictionally, are either deficient or are recommended for approval by the Court. The examiners' notes are finalized three (3) court days before the scheduled hearing date.

Notes appearing on the calendar are for the Court's benefit in reaching its determination and decision. Counsel may be informed of and may rectify said deficiencies by filing appropriate verified supplements and/or amendments provided appropriate notices are given as required by statute or rule. Supplements and corrections not received by the examiner prior to the three (3) day finalization of notes will not be reflected in the notes reviewed by the Court, and such matters may be continued for further hearing to allow further examination and review. The Court, in its discretion, may consider such late-filed supplements/corrections..

The Probate Examiner will not ordinarily discuss said notes in detail nor advise counsel of the action to be taken, nor is the Clerk's Probate Section authorized to answer questions regarding probate notes. Counsel or their secretaries may call for Examiner's notes in advance of the hearing or may retrieve notes via the Court's Internet website. Each Court location may set its own hours for telephone availability of its examiners.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.0105 CONTINUANCES

A. Generally: Prior to hearing on uncontested matters, Counsel (or moving party if self-represented) may request a continuance of at least three weeks by telephoning the Probate Clerk's Office. By making a telephonic request, Counsel represents to the court that he or she has notified the client of the request, and has notified other parties, counsel or other interested persons for whom

counsel has reason to know may attend the hearing.

The Court will rule on the request at the time of hearing. Requested hearing dates will be considered at the hearing, but a different date may be set depending on the number of matters already set on Calendar.

If a party or client appears at the hearing, and represents that he or she was not notified of the Request, the Court may issue an Order to Show Cause why the requesting party should not be sanctioned for failing to notify the affected party/client of the requested continuance.

Requests to continue Orders to Show Cause and Requests to Continue matters for a period of less than three weeks must be made by Declaration and Order, stating good cause for the request.

Telephonic Requests will not be taken on contested matters and may be denied on Orders to Show Cause.

B. Matters Not Approved. At the call of the calendar, if the matter is not ready for hearing, it will be continued for at least four (4) weeks, unless good cause is shown otherwise. Any matter continued two (2) times may be ordered off calendar or denied.

C. Objections to Petition for Probate of Will. When a petition for probate of will is called for hearing and oral objection thereto is raised by a party who declares his intention to file a written contest, the Court normally will continue the hearing for a reasonable time with the understanding that if a contest is not on file at the new hearing date, the hearing will proceed.

D. Objections to Approved Matters. At the call of the calendar and if petitioner is not present:

1. If objection or exception is taken to any matter on the approved list, the Court shall continue the matter to allow for the filing of written objections or exceptions and the giving of notice thereof to petitioner, or

2. If the Court proposes to make a change in the relief prayed for, the matter shall be continued and petitioner shall be notified of the continuance and proposed change by the Court Clerk.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 10-18-02, effective 1-1-03; amended 4-28-06, effective 7-1-06)

6.0106 HEMET SESSION

(Deleted 4-4-92, effective 7-1-92)

SECTION II
APPOINTMENT OF DECEDENT'S PERSONAL REPRESENTATIVE

6.0201 SPECIAL LETTERS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0202 PETITIONS FOR LETTERS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06)

6.0203 NOTICE OF PETITION TO ADMINISTER

A. Probate of Will—Correcting Notice

1. Where notice of petition to administer has been published pursuant to law, but the notice mailed is not legally sufficient, the matter may be continued to a date which permits statutory notice of the continued hearing to be mailed. Publication of the notice of petition to administer is proper if the Court makes a finding under Probate Code Section 8122.

2. Where notice of petition to administer has been properly prepared and mailed, but the publication of notice of petition to administer is not legally sufficient, the matter shall be continued so as to allow for proper publication and notice by mail need not be given of the continued hearing date.

B. Notice After Petitions Ordered Off Calendar. In the event the petition for probate or for letters is ordered off calendar and the matter is later reset for hearing, then in that event, a new notice of petition to administer thereon must be published and mailed.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 20-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; amended 4-28-06, effective 7-1-06)

6.0204 PROOF OF WILLS IN UNCONTESTED PROCEEDINGS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90 amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06)

6.0205 PERSONAL REPRESENTATIVE'S BOND AND BLOCKED ACCOUNTS

(Adopted 1-1-86 amended 3-17-89, amended 10-21-89, effective 1-1-90; effective 7-1-89; amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06)

6.0206 FOREIGN AND LOST WILLS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06)

SECTION III
(RESERVED)

SECTION IV
SMALL ESTATE PROCEEDINGS

6.0401 PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90 deleted 4-28-06, effective 7-1-06)

6.0402 AFFIDAVIT RE REAL PROPERTY OF $20,000.00 OR LESS

(Adopted 1-1-86; Amended 3-17-89, effective 7-1-89; correction pursuant to Probate Code 13200(a)(5) effective 7-1-04; deleted 4-28-06, effective 7-1-06)

6.0403 SMALL ESTATE WITHOUT ADMINISTRATION SUCCESSION PETITIONS SPOUSAL PROPERTY PETITIONS DEPOSIT OF WILL

In any Petition for Succession (Prob C 13150 et seq) or Spousal Property Petition (Prob C 13500 et seq) wherein such petition is based upon the testate direction of the decedent, the original will shall have been deposited with the court pursuant to Probate Code Section 8200. If the original will has been deposited with a foreign jurisdiction, a duly authenticated copy of the will shall be filed with the petition.

(Adopted 10-26-07, effective 1-1-08)

SECTION V
(RESERVED)

SECTION VI
PROBATE REFEREES AND INVENTORIES

6.0601 PROBATE REFEREES

A. Appointment

1. The appointment of probate referees shall be on a rotational basis. No deviation in appointment rotation shall be authorized or permitted without prior written approval of the Court for good cause shown.

2. Whenever the appointment is not effected on the order for probate, the appointment of a probate referee may be accomplished by ex-parte application delivered to the Clerk's Office.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0602 INVENTORY AND APPRAISAL

All inventory and appraisals of assets must be submitted in duplicate to the appointed referee for appraisal; and when completed

and returned, filed with the Clerk in triplicate.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amend. 10-17-98, effective 1-1-99)

6.0603 KINDS OF INVENTORIES

A. Complete Inventory. An inventory entitled "Inventory and Appraisal ( ) Complete" will be deemed to be a full inventory of all the known assets of an estate, valued as of the date of death. All items specifically bequeathed (and in existence at the date of death) must be separately listed in the inventory.

B. Partial Inventory. If the inventory and appraisal covers only a portion of the known assets of an estate, it shall be entitled "Inventory and Appraisal ( ) Partial No…"

C. Final Inventory. The final inventory and appraisal will be deemed to be the last of the partial inventories and shall be entitled "Inventory and Appraisal ( ) Final."

D. Supplemental Inventory. If property is newly discovered or received after the filing of what was thought to be a complete or final inventory and appraisal, it shall be entitled "Inventory and Appraisal ( ) Supplemental."

E. Amended/Corrected Inventory. If the inventory and appraisal is filed to correct an error in one previously filed, it shall be entitled "AMENDED/CORRECTED Inventory and Appraisal (proper block to be checked). "It should show the total inventory amount as amended. This may result in a change in the date-of-death valuation and may have an effect on the computation of death taxes, if any, and statutory compensation. The entire inventory and appraisal shall be restated, not just the items being changed or corrected. An amendment to an inventory shall not be filed.

D. Reappraisal Inventory. A reappraisal of realty as of a current date for sale purposes shall be entitled "Inventory and Appraisal ( ) Reappraisal for Sale. "Such reappraisal has no effect on date of death values. A reappraisal need not be signed by the personal representative.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.0604 BOND MODIFICATION

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

SECTION VII
MISCELLANEOUS PROBATE PETITIONS, NOTICES AND ORDERS

6.0701 APPLICATIONS FOR EX-PARTE ORDERS

A. General. All ex-parte matters shall be submitted to the Probate Department.

B. Special Notice. Petitions for ex-parte orders must contain an allegation that no special notice has been requested or that any such notice has been waived (stating the person requesting such notice); any such waivers must accompany the petition.

C. Specifically Bequeathed Property. Petitions for sale of stock or personal property must allege whether the property is specifically bequeathed. If the property is so bequeathed, the consent of the beneficiary must accompany the petition.

D. Applications for Ex-Parte Orders. All applications for ex-parte orders must be accompanied by a separate order complete in itself and shall be presented to the clerk. It is not sufficient for such an order to provide merely that the application has been granted, or that the sale of property as set forth in the petition has been approved. Since no testimony is taken in connection with ex-parte petitions, the petition must contain all facts essential for the granting of the prayer.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; amended 10-17-98, effective 1-1-99; amended 4-28-06, effective 7-1-06)

6.0702 PETITION FOR FAMILY ALLOWANCE

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.0703 PETITION FOR AUTHORITY TO OPERATE BUSINESS

The petition shall set forth sufficient facts for the Court to determine the advisability of the continuance of the business and the parties to whom notice of the hearing should be given. Ordinarily, the Court will require that at least fifteen (15) days notice of

the hearing be given to the five (5) largest creditors of the estate, in addition to the notice required under Probate Code Section 1220.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90)

6.0704 AMENDED, AMENDMENT, AND SUPPLEMENTAL

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0705 MISCELLANEOUS NOTICE PROVISIONS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 4-17-99, effective 7-1-99; deleted 4-28-06, effective 7-1-06)

6.0706 MISCELLANEOUS PROVISIONS CONCERNING ORDERS

A. Material Required in Probate Orders.

1. All orders in probate matters must be complete in themselves in that they shall set forth all matters actually passed on by the Court, the relief granted, the names of persons and descriptions of property affected with the same particularity required of judgments in civil matters. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in said balance.

2. It is the duty of the Court, upon distribution, to determine whether a valid trust has been created by a will, to determine the scope and terms of the trust, and to order distribution of the trust property to the trustee. Since the decree of distribution supersedes the will, the terms of the trust shall be incorporated in the decree in such manner as to give effect to the conditions existing at the time distribution is ordered.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amend. 10-17-98, effective 1-1-99; amended 4-28-06, effective 7-1-06)

SECTION VIII
CREDITORS' CLAIMS

6.0801 FORM OF CLAIMS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.0802 CLAIMS FILED WITH THE COURT

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0803 CLAIMS OF PERSONAL REPRESENTATIVE

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.0804 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable costs of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken setting forth the reasons for credit for payment of interest where the delay in payment of the claims is not justified by the facts set forth. Interest for funeral and interment claims will be allowed only as provided by Health and Safety Code Section 7101, and will be separately set forth.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89)

SECTION IX
SALES

6.0901 REAL PROPERTY SALE

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.0902 REAL PROPERTY SALE—APPRAISAL WITHIN ONE YEAR

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.0903 REAL PROPERTY SALE—BROKER'S COMMISSION

Where more than one broker is involved, petitioner shall indicate the manner in which the commission is to be allocated if agreed upon between the brokers. No commission shall be paid to a broker who is a buyer or related to the buyer within the 2nd degree.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 4-28-06, effective 7-1-06)

6.0904 SALE OF SPECIFICALLY DEVISED PROPERTY

Notice of time and place of hearing of the return of sale must be given to the specific devisee of the property if the sale is for abatement, otherwise his/her consent must be filed prior to hearing on the return.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90 amend. 10-17-98, effective 1-1-99)

6.0905 WRITTEN OVERBIDS

At the hearing on confirmation of sale at which an overbid is accepted, a written overbid is required to be filed with the Court by the successful bidder.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 4-28-06, effective 7-1-06)

6.0906 PERSONAL PROPERTY MUST BE APPRAISED BEFORE SALE

Sales of securities will not be approved under Probate Code 10200 et seq., sales of personal property under Probate Code 10250 et seq., unless the property has been appraised. A reappraisal for sale will be required if the personal property has not been appraised within one year prior to the date of the confirmation hearing, unless the court dispenses with such reappraisal. When necessary, a partial inventory and appraisal may be filed for this purpose.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

SECTION X
ACCOUNTS, FEES AND DISTRIBUTIONS

6.1001 REQUIRED FORM OF ACCOUNTS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 10-22-94, effective 1-1-95; deleted 4-28-06, effective 7-1-06)

6.1002 WAIVERS OF ACCOUNT

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1003 PERSONAL REPRESENTATIVES' VERIFICATIONS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 10-22-94, effective 1-1-95; deleted 4-28-06, effective 7-1-06)

6.1004 COMPENSATION

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amend. 10-30-99; effective 1-1-00; deleted 4-28-06, effective 7-1-06)

6.1005 ALLEGATIONS RE CREDITORS' CLAIMS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1006 (DELETED 7-1-89)

6.1007 TAXES

A. Payment. Petitions for final distribution should contain an allegation that all personal property, current income taxes and all federal and California estate taxes have been paid or that such estate taxes have been adequately secured to the satisfaction of the Internal Revenue Service.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.1008 ASSETS TO BE LISTED

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1009 PRELIMINARY DISTRIBUTION BONDS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1010 DUPLICATING AND TELEPHONE COSTS

The Court may allow reimbursement for costs of duplication of documents, long distance telephone calls, postage charges and travel costs incurred by the attorney or estate representative and travel costs in extraordinary circumstances.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amend. 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92)

6.1011 ALLEGATION RE CHARACTER OF PROPERTY

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1012 COMPLIANCE WITH PROBATE CODE SECTION 9202

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amend. 10-17-98, effective 1-1-99; deleted 4-28-06, effective 7-1-06)

SECTION XI
GUARDIANSHIPS

6.1100 OUTSTANDING CUSTODY ORDERS

(Added 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06)

6.1101 RELATIVE AND NON-RELATIVE GUARDIANSHIPS OF THE PERSON AND/OR ESTATE

A. Upon filing of the initial or successor petition for guardianship, the petitioner or the petitioner's attorney shall furnish to the Clerk, for transmittal to the designated agency, the following:

a. A copy of the petition;

b. A completed questionnaire form; Note: If there is more than one proposed guardian:

1. An Authorization for Release of Information form completed and signed by each proposed guardian;

2. A Social History and Personal Data form to be completed and signed by each proposed guardian;

3. In the case of a relative guardianship, a check or payment to the Executive Office for the investigation assessment. In the case of a non-relative guardianship, a check or payment to the Department of Public Social Services for the investigation assessment. Where Application and Order for Waiver of Court Fees and Costs has been filed in the proceeding, the assessment may be waived by the Court if the Court finds that all parties are indigent.

B. The Court may waive an investigation and assessment where the petition is for the guardianship of the estate only, and the proposed guardian is a parent or where the petitioner is a corporate fiduciary.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-4-92, effective 7-1-92; amended 10-30-99; effective 1-1-00; amended 4-28-06, effective 7-1-06)

6.1102 JUVENILE GUARDIANSHIPS OF THE PERSON AND/OR ESTATE

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amend. 10-17-98, effective 1-1-99; deleted 4-28-06, effective 7-1-06)

6.1103 DUTIES OF GUARDIAN—LIABILITY OF PARENTS TO SUPPORT CHILD

As parents are required by statute to support their children, the Court will not permit guardianship funds to be used for the minor's maintenance where one or both parents are living, except upon a showing of the parents' financial inability or other circumstances which would justify the Court in departing from this rule in the best interests of the minor.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89)

6.1104 GUARDIAN'S ACCOUNTS

Where a guardian accounts for the assets of more than one minor, an accounting for each minor must be set forth separately.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.1105 ADDITIONAL POWERS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1106 ESTABLISHING CHILD SUPPORT ORDERS IN A GUARDIANSHIP CASE (PROBATE CODE SECTION 1500 ET. SEQ. AND FAMILY CODE SECTION 3950, 4000 AND 17400 ET. SEQ.)

When the Appointment of a Guardian is granted in a Probate proceeding and the Guardian seeks to establish child support orders, the Guardian shall petition the court by filing a Notice of Motion (Judicial Council Form 1285.10) or Order to Show Cause (Judicial Council Form 1285) in the existing Guardianship case. A hearing shall be scheduled in the family Law Department to address child support issues.

Upon review of the pleadings, the Family Law Court may direct the Department of Child Support Services (DCSS) to take the appropriate action pursuant to Family Code Section 17400 et. seq. to establish, collect and enforce child support obligations as it relates to the biological parents.

(Adopted 4-28-06, effective 7-1-06)

SECTION XII
CONSERVATORSHIPS

6.1200 TEMPORARY CONSERVATORSHIPS

In addition to the notice required pursuant to Probate Code, Section 2250, all persons entitled to notice on the general petition shall be given at least twenty-four (24) hour, telephonic notice of the request for appointment of a temporary conservator.

(Added 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.1201 APPOINTMENT OF GENERAL CONSERVATORS

(Added 4-25-98, effective 7-1-98; amended 10-21-89, effective 1-1-90; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1202 LIMITED CONSERVATORSHIPS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1203 CAPACITY TO GIVE INFORMED CONSENT FOR MEDICAL TREATMENT

A. If a separate petition is filed concerning capacity of the conservatee to consent to medical treatment pursuant to Probate Code 1880, et seq., the petition must be filed in duplicate with a Riverside Superior Court form entitled "Order Appointing Probate Investigator" and "Probate Investigator's Referral Form" (even if previously filed), and shall contain a statement that there is on file a current Notification to Court of Current Address of conservatee.

B. Termination of Life Support Treatment. Notwithstanding that the conservator has the authority to give medical consent for the conservatee, the conservator shall not withhold or terminate life support treatment without prior court authorization. Advice of a licensed physician as well as the consents of the immediate family members are required.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 10-17-98, effective 1-1-99)

6.1204 ADDITIONAL POWERS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1204.1 EMPLOYMENT OF CARE PROVIDERS

All payments made to care providers (relative or non-relative) for personal care to the conservatee must be authorized by the court prior to the rendition of services.

(Added 10-19-96, effective 1-1-97; amend. 10-17-98, effective 1-1-99)

6.1205 CONSERVATOR'S ACCOUNTS

A. Copies to be Sent. At the time of filing the accounting, a Riverside Superior Court form entitled "Probate Investigator's Referral Form", and a conformed copy of the "Accounting" must be sent to the Probate Investigator's Office, and if an investigator has not been previously appointed, a completed Riverside Superior Court form entitled "Order Appointing Court Investigator" must be filed to obtain an investigator. A copy of the report, petition and account shall be mailed to counsel for the conservatee, or to conservatee personally if unrepresented, at least ten days before the hearing.

B. Conservatee's Address. The conservatee's current residence address should be set forth in each report or account filed.

C. Conservatorships, Small Estate Waivers of Account, Period of Waiver. A waiver of account granted upon the ground of limited estate assets, pursuant to Probate Code Section 2628(b), shall be applicable only for the period from the last conservatorship review to the review hearing upon which the waiver is granted. At each successive review hearing, the conservator of an estate shall submit a new declaration in support of the waiver of account, which shall establish the necessary elements for a waiver of account pursuant to Prob C 2628(b). In the absence of such elements entitling a waiver of account, an account shall be presented.

D. Conservatorships/Trusts, Trust Accounts, Conservator as Trustee, Court Jurisdiction of Trust. At the filing of a Petition for Conservatorship of an Estate, the Petitioner shall advise the Court if the Conservatee is the settlor of a pre-existing trust, wherein the Proposed Conservatee is a beneficiary of such trust. The petitioner shall also advise the Court of whether the proposed Conservator of the Estate is a trustee of said trust. The court shall provide a form for such disclosure, which shall accompany the petition upon filing.

The Court may order a conservator of the Estate, who is also acting as the trustee of said trust, to account for the Trust, concurrent with any account for the conservatorship.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 10-4-91, effective 1-1-92; amend. 10-22-94, effective 1-1-95; amend. 10-17-98, effective 1-1-99; amended 4-28-06, effective 7-1-06; amended 10-26-07, effective 1-1-08)

6.1206 NOTIFICATION OF ADDRESS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1207 TERMINATION OF PROCEEDINGS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1208 INVENTORIES AND APPRAISALS

Copies of all inventories and appraisals shall be served on any attorneys of record for any conservatee at the time of filing with the Clerk.

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; amended 4-28-06, effective 7-1-06)

6.1209 LIMITED CONSERVATORSHIPS

(Added 4-25-98, effective 7-1-98; deleted 4-28-06, effective 7-1-06)

6.1210 APPOINTMENT OF COUNSEL WHEN PETITION SEEKS DEMENTIA POWERS

Counsel shall be appointed to represent the proposed conservatee upon the filing of a petition for appointment of conservator seeking dementia powers.

(Adopted 4-28-06, effective 7-1-06)

6.1211 FINDINGS REQUIRED REGARDING PAYMENT OF ATTORNEY FEES TO COURT APPOINTED COUNSEL

One of the following findings shall be made in conservatorship matters where counsel has been appointed:

The conservatee, proposed conservatee, limited conservatee, proposed limited conservatee, or person alleged to lack legal capacity is:

* Able to pay court-appointed counsel's attorney fees.

* Unable to pay court-appointed counsel's attorney fees.

* Able to pay a portion of the sum in the amount of $_____.

* The court presently lacks sufficient information to determine whether the conservatee, proposed conservatee, proposed limited conservatee, or person alleged to lack legal capacity, or the conservator of such person's estate has sufficient funds to pay all or a portion of the attorney's fees. Therefore, the court orders the County of Riverside to pay attorney an amount to be determined upon submission of the payment voucher.

Note: If this finding is made, the court shall reconsider the ability to pay all or a portion of the attorney's fees paid by the County of Riverside at the time of the hearing on the First Accounting, and the probate examiner(s) shall make a note regarding same. Should the court determine that there is an ability to pay, an order shall be made that the County of Riverside be reimbursed, from the estate, for attorney's fees advanced, payable to the County of Riverside.

(Adopted 4-28-06, effective 7-1-06)

SECTION XIII
[(RESERVED)]

SECTION XIV
MISCELLANEOUS

6.1401 WITHDRAWAL OF ATTORNEYS OF RECORD

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 4-4-92, effective 7-1-92; deleted 4-28-06, effective 7-1-06

6.1402 FEES OR COMMISSIONS TAKEN IN ADVANCE

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; deleted 4-28-06, effective 7-1-06)

6.1403 (DELETED 7-1-89)

6.1404 (DELETED 1-1-90)

SECTION XV
OTHER PROTECTIVE PROCEEDINGS—MINORS AND CONSERVATEES

6.1501 (DELETED 7-1-89)

6.1502 PROCEEDING UNDER PROBATE CODE SECTION 3411

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1503 REQUESTS FOR WITHDRAWAL OF IMPOUNDED FUNDS

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06; deleted 4-28-06, effective 7-1-06)

6.1504 AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

(Adopted 1-1-86; amended 3-17-89, effective 7-1-89; amended 10-21-89, effective 1-1-90; deleted 4-28-06, effective 7-1-06)

6.1505 COMPROMISE OF DISPUTED CLAIMS—SPECIAL NEEDS TRUSTS

When a Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person with a Disability is filed where a request is made for the establishment of a Special Needs Trust, a separate probate petition shall be filed requesting the establishment of the Special Needs Trust, to be heard concurrently with the Petition to Approve Compromise of Disputed Claim. The probate petition shall be filed in a new file with a probate case number, and there shall be no initial filing fee for such petition.

(Adopted 10-24-08, effective 1-1-09)

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Sacramento County
Probate Rules

Effective January 1, 2010

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CHAPTER 15—PROBATE

PART ONE
General

15.00 Probate Calendar

(A) The probate department calendars are heard in the department(s) designated by the Presiding Judge. (Amended effective 1/1/10)

(B) Probate matters, including all probate law and motion matters, will be calendared as provided in the calendaring policy, located on the court's web at http://www.saccourt.ca.gov, which may be modified from time to time. This policy, copies of which are also available from the Probate Unit, provides minimum time for setting. The Probate Examiner Staff may authorize shorter settings. (Amended effective 1/1/10)

(C) Probate calendar notes identifying deficiencies in the papers will be posted in the hall outside Department 129 and on-line at http://www.saccourt.ca.gov 10 to 12 calendar days before the date of hearing. Attorneys and parties not represented by counsel must respond and clear calendar notes in advance of the hearing date and clear all deficiencies in the form provided pursuant to Local Rule 15.04.5. Attorneys and parties not represented by counsel should periodically check for updated information as notes may be amended prior to the hearing date. (Amended effective 1/1/10)

(D) LPS matters, and all other matters involving the Public Defender and County Counsel, shall be heard only on a day designated by the court. (Amended effective 1/1/10)

15.00.1 (deleted effective 1/1/10)

15.01 (deleted effective 1/1/09)

15.02 Form Of Papers Presented For Filing

(A) Accounts and descriptions of assets may be single spaced within each item. (Renumbered effective 1/1/10)

(B) When filing any document the parties shall furnish the court with one original which is unbound and clipped or rubber banded and one copy in a format pursuant to California Rules of Court, rule 3.1110. This section shall not apply to any motion or petition filed pursuant to California Rules of Court, rule 3.1114. (Renumbered and Amended effective 1/1/10)

(C) At the time the Petition for Guardianship is set for hearing, an original and three copies of the documents listed on the court's local Guardianship Check-Off Sheet located on the Sacramento Superior Court's internet website (http://www.saccourt.ca.gov) are required. (Added effective 1/1/10)

15.02.5 (deleted effective 1/1/10)

15.02.6 (deleted effective 1/1/09)

15.03 (deleted effective 1/1/09)

15.04 Preparing For Hearing

(A) All papers and documents pertaining to calendared probate matters, including additional and supplemental documents, must be filed no later than three court days prior to the scheduled hearing date. For example, a Wednesday court hearing requires filing documents by the previous Friday at 4:30 p.m.; a Thursday court hearing requires filing documents by the previous Monday at 4:30 p.m.; and a Friday court hearing requires filing the documents by the previous Tuesday at 4:30 p.m. (Amended effective 1/1/09)

(B) All deficiencies stated in the probate calendar notes must be cleared at least three court days prior to hearing. This is so even if counsel or a party believes the deficiency does not exist. If the calendar notes show a deficiency or raise a question, it is the responsibility of the party or the attorney to address that particular matter with Probate Examiner Staff at least three court days prior to hearing. This rule is subject to strict enforcement. (Amended effective 1/1/10)

(C) If deficiencies still exist when the case is called, the court may either drop or continue the matter. (Added effective 1/1/97)

(D) Continuances are strongly disfavored. (Added effective 1/1/97)

15.04.5 Form For Written Response To Calendar Notes

(A) Written response to calendar notes must be presented in pleading format consistent with the requirements of the Code of Civil Procedure and California Rules of Court and be captioned "Response to Calendar Notes."

(B) The response must list each calendar note. The response to each note must be written in paragraph form directly below the corresponding calendar note. (Amended effective 1/1/09)

(C) If a deficiency requires proof of a filed document, an endorsed copy must be attached as an exhibit to the response.

(D) The response must be signed and verified pursuant to Probate Code section(s) 1020 through 1023. (Amended effective 1/1/10)

15.05 Objections

A request for affirmative relief, other than a request for surcharge on an account, must not be included in an objection to matters on calendar and must not be considered except upon filing a separate petition, calendared for hearing and noticed as required by law. (Amended effective 7/1/05)

15.06 (deleted effective 1/1/09)

15.07 Assignment Of Probate Referee

A probate referee will be assigned on a rotational basis from the panel of probate referees. In the event separate proceedings are filed for related wards or conservatees of the estate, the court will permit an exception to this rule upon proper showing. (Amended effective 1/1/10)

15.08 Calendar Matters Recommended For Approval

Matters that are Recommended For Approval (R.F.A.) by the Probate Examiner Staff on the posted calendar notes will be considered submitted if there is no appearance by counsel. However, if an interested person appears and objects and the court determines that appearance by counsel is necessary, the matter may be continued. (Amended effective 7/1/02)

15.09 Matters Not Heard In Probate Department

All petitions in probate matters to be set for hearing and all papers filed in cases not heard in the Probate Department must be filed with the Probate Unit. (Amended effective 1/1/10)

15.10 Contested Matters

(A) Contested matters may, in the discretion of the court, be resolved on the morning calendar, set for Alternative Dispute Resolution (ADR), or be set for trial. (Amended effective 7/1/02)

(B) Upon filing a written objection, the contestant must serve on all parties a copy of the objections along with blank copies of the Alternative Dispute Resolution Certification and Selection Form (local form) and the Stipulation to Alternative Dispute Resolution (local form). A Proof of Service (local form is available) must be completed and filed with the court. (Amended effective 1/1/10)

(C) All parties in a contested matter who make an appearance must complete the Alternative Dispute Resolution Certification and Selection Form, file the original with the court, serve copies on all parties, and file a Proof of Service with the court prior to the hearing. (Amended effective 1/1/10)

(D) All law and motion matters pertaining to probate proceedings will be heard by the Probate Department and are subject to the calendaring policies and calendar note provisions of this chapter, rather than receiving tentative rulings as provided for matters

heard in the Civil Law and Motion Departments. (Amended effective 1/1/10)

15.10.4 Setting Contested Probate Trials

(A) Before requesting that a contested matter be set for trial, the parties must participate in good faith in an alternative dispute resolution process (ADR). The matter will remain on the court calendar pending the outcome of the ADR process. (Amended effective 1/1/10)

(B) Upon receipt of a written or oral request that the contested matter be set for trial, the court will set a trial date and Mandatory Settlement Conference date. The Probate Department will provide the parties who are present with a written copy of the Settlement Conference Procedures set forth in Rule 15.10.7. The Mandatory Settlement Conference Procedures may be waived at the discretion of the court. Unless waived, the Mandatory Settlement Conference Procedures must be completed prior to trial. (Amended effective 1/1/10)

15.10.5 Settlement Conferences

(A) Parties must participate in a settlement conference as ordered by the court. A settlement conference must be scheduled by the Probate Department following the court's order. Not less than five days prior to the scheduled settlement conference, each party shall insure that an original and two copies of the Settlement Conference Statement is received by the clerk of Department 128 and received by every other party. The Settlement Conference Statement must not be made part of the court's file. (Amended effective 1/1/10)

(B) If any counsel or party subject to this rule fails to comply with this rule, the court on motion of a party or on its own motion, may strike all or part of any pleading of that party, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order the offending party or their counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. No penalty may be imposed under this rule without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed. (Amended effective 1/1/09)

(C) Settlement Conference Statements

(1) Prior to the scheduled settlement conference, and within the time required by California Rules of Court each party must insure that the original Settlement Conference Statement is submitted to the clerk of Department 128 and a copy is served on all other parties. The Settlement Conference Statement must not be made part of the court's file, except for good cause.

(2) The parties may not stipulate to waive the requirement of filing a Settlement Conference Statement.

(Amended effective 1/1/09)

(D) Settlement conferences will be conducted in Department 128 on the second floor of the William R. Ridgeway Family Relations Courthouse unless otherwise ordered by the court. Counsel/party(ies) must meet and confer before the date of the settlement conference in a reasonable attempt to resolve the disputed issues. (Amended effective 1/1/09)

(E) Excuses from Attendance; Telephone Availability:

(1) Any request to the court to excuse attendance of any person whose attendance is required by California Rules of Court must be submitted to the clerk in Department 128 not less than five court days before the date set for the settlement conference. The request shall be made, in writing after service of a copy of the request on every other party. Submission of said request, or the granting of said request, does not excuse any party from the requirement to file a Settlement Conference Statement in conformity with the California Rules of Court and these Local Rules.

(2) Any person whose presence at a settlement conference is required by these rules may be excused by the court for good cause shown but, if so excused, shall be and remain immediately available for telephone communication with counsel and the court at the time set for and throughout the settlement conference.

(3) Any person whose presence at the settlement conference is required by California Rules of Court must appear at the settlement conference unless their request to be excused is granted by the court.

(Amended effective 1/1/09)

(F) Counsel and the parties must participate in good faith in the settlement conference until released by the settlement temporary judge or judges or until the settlement temporary judge or judges confirm the trial hearing date. Failure to participate in good faith in the settlement conference may be a basis for the imposition of sanctions or changes in the calendar status of the action.

(Amended effective 1/1/09)

(G) If the matter is settled before the date of a settlement conference, attorneys or parties not represented by counsel must immediately notify the clerk in Department 128 within 24 hours of the settlement. Failure to report a settlement as required by this rule may result in the imposition of monetary sanctions by the court. (Amended effective 1/1/09)

15.10.6 Settlement Of Contested Matters

(A) If the parties have settled the contested matters relating to petitions pending before the court prior to the trial date, the trial must be vacated and the date set for trial must be treated as a status hearing regarding final disposition of all petitions pending before the court.

(B) The petitioner(s) and contestant(s) must personally appear or appear by counsel and present to the court the status of each matter pending on the court's calendar.

(C) The court must determine what matters pending can be disposed of at that time and what matters require a continuance on the probate calendar due to deficiencies, need for the filed written settlement agreement, or other good cause determined by the court. (Amended effective 7/1/05)

15.10.7 Trial Procedures

(A) Not less than three court days prior to trial, the contesting parties must submit the following at the Probate Unit:

(1) File and serve on all parties a trial statement setting forth each issue in dispute, and the legal and factual basis in support of the party's contention as to each disputed issue;

(2) File and serve all motions in limine and other pretrial motions.

(3) File written confirmation that each of the contesting parties has exchanged copies of all exhibits which may be offered in evidence, except exhibits that will be used for rebuttal or impeachment.

(Amended effective 1/1/10)

(B) On the day of trial:

(1) Immediately prior to the commencement of trial, pre-mark and submit all exhibits and submit a list of all exhibits to the Probate Department except for exhibits that may be used for rebuttal or impeachment.

(a) Petitioner's exhibits must be marked numerically.

(b) Respondent's exhibits must be marked alphabetically.

(c) All other exhibits must be listed without numeric or alphabetic designation.

(2) Provide a list of all exhibits that will be entered into evidence by stipulation.

(3) Identify in writing all facts to which a stipulation will be entered.

(Amended effective 1/1/10)

(C) Relief from Rules

Relief from the operation of these rules relating to contested trials may be had in appropriate cases but only on motion for good cause shown. The parties may not stipulate to waive the requirements of these rules. Failure to comply with said rules may result in the issuance of sanctions as requested by the other side, or as ordered by the court as permitted by law. (Added effective 1/1/10)

15.10.8 (deleted effective 1/1/10)

15.11 Preparation Of Orders

(A) The caption of all orders or judgments must include the department, date and time of hearing. (Amended effective 7/1/05)

(B) All proposed orders or judgments must be presented to the clerk no later than three court days prior to hearing. This will

allow them to be checked against the calendar notes. (Amended effective 1/1/10)

(C) When a petition is granted subject to receipt of certain documents, counsel must present the appropriate documents together with the order to the Probate Unit. (Amended effective 1/1/10)

(D) A party may seek a temporary guardianship or conservatorship by ex parte application. Applications for ex parte orders in probate matters shall be presented to the Probate Unit between the hours of 8:30 a.m. and 11:00 a.m. and 1:30 p.m. and 2:30 p.m. Applications submitted after 2:30 PM will be processed on the next court business day.

(Added effective 1/1/10)

15.12 Waiver Of Rule

For good cause shown, the court in probate proceedings may waive the application of any local rule in a particular case. (Effective 1/1/94)

15.13 (deleted effective 1/1/10)

PART TWO
Notices

15.14 Preparation Of Notices

(A) All notices required by the Probate Code to be given by the clerk shall be prepared by the party. (Amended effective 1/1/10)

(B) All notices required to be published (except the notice required by Probate Code section 8120) must be captioned with the words "Notice of Hearing" followed by the general nature of the petition. (Amended effective 1/1/10)

(C) When a clerk's posted notice is required, a completed Judicial Council form of Notice of Hearing together with all necessary copies shall be presented concurrently with the petition. (Amended effective 1/1/97)

15.15 PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED; PROCEDURE FOR DROPPING AND RESETTING A MATTER FOR HEARING

(A) When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set, regardless of the filing of a new petition, an amended petition, a new notice, or otherwise.

(B) When a matter on calendar is to be dropped and then reset, the petitioner must request in writing that the current setting be dropped (specifying the date and time of the setting); this request must be provided directly to the clerk of the probate department; a copy of the request and a copy of the first page of the petition must then be provided to the Probate Unit to reset the matter.

(Amended effective 1/1/10)

15.16 Requirements For Giving Notice Of Probate Of Will

The notice of hearing of a petition for probate of will is sufficient notice respecting all instruments which are offered for probate in the petition for which the notice of hearing is given. If any other instruments, e.g., alleged wills or codicils not mentioned in the petition, are presented to the court by way of an amended petition, a second petition, or otherwise, a new notice thereon must be given setting a date of hearing not earlier than the date set in the original notice. (Effective 1/1/94)

15.17 Procedural Requirements For Substituted Service

(A) Where personal service is required by the Probate Code or these rules, substituted service may only be used with the court's prior approval. (Renumbered effective 1/1/04)

(B) Substituted service by publication will not be authorized by the court until an affidavit or declaration of the failure of attempted service by other methods of substituted service has been filed. (Renumbered effective 1/1/04)

15.18 Additional Notice In Courts' Discretion

Under the provisions of section 1202, the court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interest of any person may be adversely affected by the determination of the issue raised by

the pleading. (Effective 1/1/94)

15.19 (Reserved)

15.20 Identify Persons To Receive Notice

In all petitions, the names and addresses of the persons entitled to notice must be set forth along with the status entitling the person to notice (e.g., "heir," "beneficiary," or "filed request for special notice"). (Amended effective 7/1/05)

PART THREE
Appointment Of Executors And Administrators

15.21 Special Letters, Notice, And Appointment

(A) A petition for special letters of administration ordinarily will not be granted without 15 days notice to the surviving spouse, the person nominated as executor, and any other person the court determines to be equitably entitled to notice. (Amended effective 1/1/97)

(B) In appointing a special administrator, preference will be given to the person entitled to letters testamentary or of administration. If it appears that a bona fide contest exists between these persons, the court will consider the appointment of a neutral party as special administrator.

(C) A petition for special letters of administration must be presented separately from and must not be included in a petition for general letters. (Amended effective 7/1/05)

(D) Neither general powers nor IAEA authority can be given to a special administrator, except at a hearing for which notice has been mailed and published as provided in Section 8545. (Added effective 1/1/97)

(E) If the petition for special administrator requests authority to defend suits or negotiate claims against the estate, then the petition must pray for general powers, unless good cause is stated why notice to creditors pursuant to Probate Code section 9050 will not be necessary. (Amended effective 1/1/10)

15.22 (deleted effective 1/1/09)

15.23 (deleted effective 1/1/09)

15.24 (Reserved)

15.25 Waiver Of Bond

(A) When a verified petition for letters testamentary or of administration alleges that all beneficiaries or heirs have waived bond and the petition requests appointment without bond, such waivers shall be in writing and filed prior to the hearing on the petition.

(B) Personal representatives who are not California residents will be required to post bond unless (1) bond is waived by the beneficiaries or (2) bond is waived in the will and it appears from the face of the will that the testator was aware at the time that the nominee did not reside in California. (Amended effective 1/1/10)

15.26 Deposit Of Personal Property For Reduction Of Bond

(A) When an order restricting withdrawals and reducing bond is obtained under Probate Code section 8483, a receipt of the depository acknowledging the restrictions on withdrawal, without liability disclaimers, must be filed within 10 days of the order or if the property to be deposited is not then in the possession of the fiduciary, within 10 days of receipt of the property by the fiduciary. (Amended effective 1/1/10)

(B) The court may order that the funds must be deposited directly into the blocked account without otherwise coming into possession of the fiduciary, and continue the matter on calendar for filing of the receipt of the depository, Judicial Council Form MC-356. (Amended effective 1/1/10)

15.27 Distribution Of Property Held By Depository

Unless the judgment distributing cash or other personal property held pursuant to section 8483 or section 9701 directs the depository to pay the funds or distribute the property so held to the distributees, additional bond to comply with section 8480 must be furnished. (Effective 1/1/94)

15.28 Multiple Representatives

When multiple representatives are appointed by an order which directs that "letters shall issue to them," the clerk will not allow less than all to qualify. (Effective 1/1/94)

15.29 Proof Of Wills By Affidavit Or Declaration

(A) Proof as to the admissibility of each testamentary document must be submitted; except that in the event there is a codicil which expressly republishes the will, proof of the execution of the codicil is deemed sufficient. (Amended effective 1/1/97)

(B) The copy of the will attached to the proof of subscribing witness must be certified by the attorney of record. (Amended effective 1/1/97)

15.30 (deleted effective 1/1/09)

15.31 Admission Of Will Or Codicil Containing Deletions And/Or Interlineations

A petition for probate of a will and/or codicil which includes deletions and/or interlineations must include a request for determination of the validity of said deletions and/or interlineations and include any documentary evidence in support of the petitioner's position. (Amended effective 7/1/05)

In addition to mailing a Notice of Petition to Administer the Estate, the petitioner must cause notice by mail of a copy of the petition and all supporting documents at least 15 days prior to the hearing to all persons requiring notice pursuant to Probate Code section 8110 and to all persons affected by the deletions and/or interlineations. (Amended effective 1/1/10)

15.32 Listing Heirs, Devisees, Executors, And Fiduciaries In Petitions

Petitions for letters testamentary or of administration must include a list of the names of the following persons:

(A) All named executors, including alternate executors;

(B) All heirs and devisees, including:

(1) Deceased and contingent devisees except those contingent devisees whose interests have been clearly precluded by survivorship provisions in the will.

(2) Devisees must be listed even if the interests of such persons appear to have been revoked by a subsequent codicil.

(3) Persons who are potentially intestate heirs under Probate Code sections 6402.5, 6454 and 21110. This includes persons whose interests are dependent on characterization of property as community or separate.

(Amended effective 1/1/10)

(C) Fiduciaries named in a will or codicil presented for probate, including all nominees as trustee, guardian, or alternates thereof. (Effective 1/1/94)

(D) Persons nominated to act as personal representative. (Added effective 1/1/97)

(E) The proposed personal representative. (Added effective 7/1/02)

15.33 Age, Address, And Relationship

The petition must also include the following with respect to persons to be noticed in the petition. (Amended effective 1/1/10)

(A) The address, including the residence number, street, city, state, and zip code, or post office box number customarily used for residence mailing purposes.

(B) The relationship of the person to the decedent.

(C) The age of the person; except that a person over the age of 18 may simply be designated as an adult unless the person's age is relevant to the person's interest in the estate. (Amended effective 7/1/05)

15.34 Noticing Persons Listed In Petitions For Administration

All living persons named pursuant to Local Rule 15.32 must be given notice of the petition for letters of administration or letters testamentary. (Amended effective 1/1/10)

15.35 Lost Wills

(A) Notice mailed for a petition to admit a lost will shall include recognition that the will is lost. (Added effective 1/1/97)

(B) A copy of the lost will must be attached to the order admitting the will to probate. (Amended effective 7/1/05)

15.36 Information Required Of Personal Representatives Upon Acknowledgement Of Duties

The driver's license number and date of birth of personal representatives (other than public officers or trust companies) must be provided in the confidential supplement to the duties and liabilities required by Probate Code section 8404. This information must be kept confidential and must not be made available for public inspection without a court order. (Amended effective 1/1/10)

PART FOUR
Motions, Petitions, And Orders

15.37 Allegation Of Existence Of Heirs

In any petition, other than Judicial Council form petitions, that requires notice to heirs at law, the petition must allege the existence of heirs in the same manner as set forth in paragraphs 6, 7 and 8 of the Judicial Council form DE-111, Petition for Probate (as revised January 1, 2005). (Added effective 7/1/05)

15.38 (Reserved)

15.39 (Reserved)

15.40 Orders To Be Complete In Themselves

(A) All orders and judgments in probate matters must be complete in themselves. (Amended effective 1/1/97)

(B) All orders issued by the court, must set forth the names of persons and descriptions of property (including assessor's parcel number and specific legal description), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements. (Amended effective 1/1/10)

(C) In addition to the requirements of California Rule of Court, Probate Rule 7.650(b), the names of current beneficiaries of the trust, along with their dates of birth if distributions are conditioned upon the beneficiaries having attained certain ages, must be included in the order. (Amended effective 7/1/05)

15.41 (deleted effective 1/1/10)

15.42 Petitions For Family Allowance (Heading Amended effective 1/1/10)

(A) The person seeking an allowance must set forth such person's income from sources outside the estate, as well as an itemization of the applicant's separate property and monthly expenses, and shall make an appropriate showing of the assets and liabilities of the estate. (Renumbered effective 1/1/10)

15.43 (deleted effective 1/1/09)

(A) Upon a motion to withdraw as attorney of record for a guardian, conservator, or personal representative, the attorney must cause a citation to be issued and personally served at least 15 days prior to the hearing, directing the client to appear at the hearing.

(B) Motions for withdrawal of the attorney made on the basis of noncooperation with the personal representative, conservator, or guardian require service of the Notice of Hearing and Petition by mail as follows:

(1) In decedent's estate proceedings, 15 days by mail to all heirs and devisees and to all persons having requested special notice;

(2) In conservatorship or guardianship proceedings, 15 days by mail to all persons who were required to be noticed in the petition for appointment and to all persons having requested special notice.

(C) When an attorney withdraws as attorney of record for the personal representative, by a substitution leaving the personal representative in pro per, the attorney must mail a copy of the substitution to all beneficiaries of the estate.

(Added effective 1/1/10)

15.44 Escheat Petitions

(A) A genealogy chart must be attached to the petition showing the relationship of the claimant to the decedent and all heirs of the decedent.

(B) A copy of the decree of distribution must be attached to the petition.

(C) All documentary evidence in support of the petition must be on file at the time the matter is calendared for hearing. (Amended effective 1/1/99)

15.45 Lodging Original Will And Proof In Summary Proceedings

(A) In any proceedings pursuant to Probate Code sections 13150, 13200, and 13650, wherein the successor in interest is determined by a will, the court will require proof that the original will has been filed with the Probate Unit (Probate Code section 8200). (Amended effective 1/1/10)

(B) Proof of the will in the above proceedings must be submitted in conformance with the requirements of Probate Code sections 8220 et seq. (Amended effective 1/1/10)

15.46 Character Of Property And Transmutation In Summary Proceedings

In any summary proceeding under Probate Code sections 13150, 13200, or 13650 where the court is to consider or determine the character of property as community or separate, the petition must set forth the form of record title and character of ownership at all relevant times. If there is an alleged transmutation of ownership interests based on a written document, a copy of the document must be filed with the petition. (Amended effective 1/1/10)

15.46.5 Evidence Of Record Title In Proceedings Under Probate Code Sections 850 Et Seq And Sections 17200 Et Seq

In a proceeding to determine ownership of property under Probate Code sections 850 et. seq. or sections 17200 et. seq., the petition must set forth the form of record title and character of ownership at all relevant times. If the form of record title is based on a written document, a copy of the document must be filed with the petition. (Amended effective 7/1/05)

15.46.6 PRODUCTION OF ESTATE PLANNING DOCUMENTS IN PROCEEDINGS PURSUANT TO PROBATE CODE SECTIONS 2580 OR 3100

(A) If a petition under Probate Code sections 2580 or 3100 seeks to provide gifts or otherwise affect the estate planning of the conservatee or incapacitated spouse, said petition must include one copy of all estate planning documents unless the petitioner obtains an order to deliver the documents to a custodian pursuant to Probate Code section 2586(d). (Amended effective 1/1/10)

(B) If the petitioner does not have possession of the estate planning documents, the petition must include a statement of the name, address and telephone number of the person(s) having possession of said documents to enable the court to issue an order for delivery of the documents pursuant to Probate Code section 2586(b). (Amended effective 1/1/10)

(C) Estate planning documents subject to subsection (A) must be enclosed in an envelope or suitable container for delivery to the court. The party submitting the documents must affix a cover sheet to the envelope or container entitled, "Estate Planning Documents of (name) For In Camera Review Pursuant to Probate Code section 2586" stating: (1) the caption of the case and (2) the date, time and department of the hearing. (Amended effective 1/1/10)

(D) Upon receipt of the documents in compliance with this rule, the Probate Unit must affix a stamp to the cover sheet recording the date of receipt.

(E) Upon conclusion of the proceedings, the documents must be returned to the party who submitted them. (Added effective 7/1/05)

15.47 Continuances

(A) The first continuance ordinarily will be granted to the moving party without an appearance, by telephone request to the Probate Department if the request is made three days prior to the hearing. The moving party must state that the moving party has complied with subsection (B). Subsequent continuances will be granted only upon good cause and will ordinarily require an appearance. (Amended effective 1/1/10)

(B) A party requesting a continuance must have notified all parties who have requested special notice, or expressed opposition, of the intent to request a continuance. A continuance will not be granted by telephone if anyone entitled to notice objects to the continuance. (Amended effective 7/1/05)

15.48 Formal Orders

The proposed formal order for a noticed hearing must be presented to the Probate Department three court days prior to the hearing. Orders not so presented may not be signed at the time of the hearing. (Amended effective 1/1/10)

PART FIVE
Creditors' Claims

15.49 Claims Of Executors And Administrators For Personal Services

Where the claim is for $1,000, or more, the claim of a personal representative, based on personal services rendered to the decedent, will not be approved by the court until a hearing has been held. At least 15 days' notice thereof must be given to all affected beneficiaries and persons who have requested special notice (Amended effective 7/1/05)

15.50 Approval Of Funeral Claims

(A) Funeral expenses (including the cost of interment, interment plot, endowment care, and a suitable monument) proportionate to the value of the decedent's assets, and in keeping with the standard of living adopted by the decedent prior to his or her death, or as provided in the will, will be approved by the court. The burden of proof as to the reasonableness of the claim for funeral expenses is on the personal representative. (Amended effective 7/1/05)

(B) Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101. (Amended effective 1/1/97)

15.51 Report On Claims

In a report accompanying an account, or in a report where an accounting is waived, it is not sufficient to allege merely that all claims have been paid. All information required by Probate Code section 10900 with respect to liabilities of the estate must be set forth in full. The following information must be included:

(A) A list of the claims filed or presented showing as applicable:

(1) the name of each claimant;

(2) the amount claimed;

(3) the date that notice of administration was mailed to the claimant; and

(4) the dates that the claim was filed, allowed or rejected, and paid.

(Amended effective 7/1/05)

(B) The status or disposition of any lawsuits on rejected claims.

(C) Whether notice was mailed to known creditors within four months of the issuance of letters (Probate Code section 9050), and the disposition of any known debts as to which the notice was not mailed. (Amended effective 1/1/10)

(D) If creditors were paid without timely filed claims (section 9150), allegations whether written demand was made within four months of the issuance of letters, the payment was made within 30 days after that period, the estate is solvent, and the debt was justly due and paid in good faith for the true amount.

(E) Whether notice was required and given to the Director of Health Services (Probate Code section 9202). (Amended effective 1/1/10)

(F) If the report requests the court to determine that a late filed claim is barred, the petitioner must provide 15 days mailed notice with a copy of the petition to the creditor. (Added effective 1/1/06)

15.52 Notice Of Administration To Creditors

If Notice of Administration of Estate is mailed to creditors, the original notice and proof of service must be filed with the court.

(Added effective 1/1/06)

PART SIX
Sales

15.53 (deleted effective 1/1/97)

15.54 (deleted effective 1/1/97)

15.55 Broker's Commission On Sale Of Real Property

(A) A petition for confirmation of sale of real property must allege whether the agent or broker directly or indirectly is (1) the purchaser of the property or (2) has an interest in the purchaser. If so, compensation in connection with the sale of the property will ordinarily be denied pursuant to Probate Code section 10160.5. (Amended effective 7/1/05)

(B) Upon the confirmation of the sale of real property, a broker's commission in excess of the amounts set forth in the following schedule will not be allowed:

Improved property	6%
Unimproved property	10% on first $20,000.00
	8% on the next $30,000.00
	5% on amount over $50,000.00

(Renumbered effective 7/1/00)

15.56 (Reserved)

15.57 Notice And Hearing On Confirmation Of Sale Of Real Property

(A) The notice of sale of real property should normally call for "cash or such credit terms and conditions as the personal representative and the court may approve."

(B) All terms and conditions of the sale must be set forth in the return of sale.

(C) Counsel must appear at all confirmation hearings. (Amended effective 1/1/97)

15.58 Sale Of Specifically Devised Property

On a sale of specifically devised real or personal property, 15 days' notice of the time and place of hearing of the petition for confirmation must be given to the devisee, or his or her consent to such sale must be filed. (Effective 1/1/94)

15.59 (deleted effective 1/1/97)

PART SEVEN
Accounts, Fees, And Distribution

15.60 Accountings

A petition for approval of an account must include a report affirmatively addressing subdivision (g) of section 1063 and subdivisions (a) and (b) of section 1064. (Added effective 1/1/99)

15.61 (deleted effective 7/1/97)

15.62 Waiver Of Account (Decedents' Estates)

The detailed accounting may be waived when all residuary beneficiaries and other distributees whose interests may be affected by the account have waived the accounting. Such waiver must be in writing and filed with the court either as part of the petition or separately. (Amended effective 7/1/05)

15.63 Independent Administration Of Estates

In addition to the requirements of California Rules of Court, rule 7.250, the Notice of Proposed Action with proof of service, and any objections, consent and waiver, must be filed with the court. (Added effective 1/1/06)

15.64 Apportionment Of Statutory Compensation

An allowance on account of statutory compensation will ordinarily not be granted until the judgment of final distribution for an attorney who withdraws or for a personal representative who resigns or is removed. (Amended effective 7/1/05)

15.65 Compensation For Extraordinary Services

(A) In addition to the requirements of CRC 7.702, a petition for extraordinary services must include the date each service is rendered. (Amended effective 7/1/05)

(B) In every case where the combined extraordinary commissions and extraordinary attorney's fees exceed $1,000, the heirs or residuary devisees must be given notice of the amounts requested. Notice may be given by mailing a copy of the petition or by including the amounts requested in the caption of the petition. (Amended effective 7/1/05)

(C) Except in unusual circumstances, extraordinary fees and commissions will not be granted prior to final distribution.

(D) Services rendered with respect to termination of joint tenancies are not the subject of extraordinary compensation, except when the decedent was the surviving joint tenant. (Effective 1/1/94)

15.66 Fees Or Commissions Taken In Advance

Commissions and fees in decedents' estates, guardianships, and conservatorships must not be paid prior to court authorization. (Amended effective 7/1/05)

15.67 Costs

The cost of unusual amounts of long distance telephone calls, photocopies, court filing, delivery, mileage traveled, faxing, and postage, if properly itemized, shall be allowed as costs of administration. (Amended effective 1/1/97)

15.68 Description Of Property Distributed; Account For Withhold

(A) The petition for distribution, as well as the judgment of distribution, must list and describe all property, including the assessor's parcel number and specific legal description of real property to be distributed. In case of intestacy: 1) where the decedent leaves a surviving spouse, the petition shall allege whether the property is community or separate; and 2) where distribution is to be made pursuant to Probate Code section 6402.5, the source of the property must be alleged. The petition shall include the balance of cash on hand. (Amended effective 1/1/10)

(B) A supplemental account must be presented if assets in excess of $2,000 are withheld from initial final distribution, unless the account has been waived. (Amended effective 1/1/97)

15.69 Petition To Include Proposed Distribution

(A) Details of the proposed distribution must be set forth either in the body of the petition or by attachment. Terms of the will as to disposition of property and what is to be distributed under the laws of intestate succession must be set forth. When the proposed distribution includes establishing a testamentary trust, the proposed terms must be fully stated in the petition. (Amended effective 7/1/05)

(B) Where an issue concerning distribution is presented, the petition must fully set forth that issue including apparent alternative resolutions for the court's consideration. Distribution issues include interpretation of the will, issues of heirship or intestate succession, the applicability of Probate Code section 6204 (next of kin) or section 6402.5 (descent of property of predeceased spouse) and the validity of a testamentary trust or its provisions. The caption and notice of hearing on the petition must include notice to affected persons that an issue concerning distribution will be submitted for the court's determination. (Amended effective 1/1/09)

15.70 Agreements For Distribution

(A) If the distributees seek a distribution in a manner other than that provided by the will or by the laws of intestate succession, a written agreement must be filed in the probate proceeding or consent thereto endorsed on the petition by all parties affected by the distribution. The order of distribution must include reference to the assignment, agreement or disclaimer which is the basis for the distribution. (Amended effective 7/1/05)

(B) A minor distributee or other distributee under disability must be represented by his or her legal representative; and prior court approval of the agreement, assignment, or disclaimer must be obtained if the distributee is subject to a guardianship or

conservatorship. (Effective 1/1/94)

15.71 Distribution To Minors

(A) The court will permit distribution of personal property to parents of a minor only if authorized by the provisions of Probate Code section 3401. The decree must indicate that the distribution is made pursuant to section 3401. An affidavit or declaration complying with the terms of section 3401 must be on file prior to the hearing. (Amended effective 1/1/10)

(B) In all other cases, the property must be distributed to the minor with a direction in the decree that the property be distributed, pursuant to section 3410 et seq., to the legal guardian of the minor or a duly appointed custodian under the California Uniform Transfers to Minors Act. The guardian, custodian, or depository must sign the distributee's receipt. (Amended effective 7/1/05)

(C) Where the court has discretion to do so, the court will ordinarily require that the funds to be distributed for a minor without a guardian of the estate shall be placed in a blocked account for the benefit of the minor. (Added effective 1/1/97)

(D) Where a guardian of a minor must be appointed, or affidavits or declarations are required under section 3401 or Probate Code section 13101, or proceedings are had under section 3410 et seq., the guardian must be appointed or such affidavits or declarations, or a certified copy of the order made under section 3410 et seq., and Local Rule 15.71 shall be filed prior to the hearing on the petition for distribution. (Amended effective 7/1/00)

15.72 CONSENT OF TESTAMENTARY TRUSTEE TO ACT

When distribution is to be made to a testamentary trustee, the consent of the trustee to act must be filed prior to the hearing on the petition for distribution. (Added effective 7/1/00)

15.73 Petition For Final Distribution

(A) Petitions for final distribution must include a report of the following:

(1) The character of all assets as separate or community where there is a surviving spouse;

(2) All capital transactions and other actions taken under the Independent Administration of Estates Act, including the amounts of any gains or losses;

(3) Disclosure of liabilities and other matters necessary to show the condition of the estate (Probate Code section 10900); (Amended effective 1/1/10)

(4) Allegations in compliance with Local Rule 15.51 (Report on Claims); Local Rule 15.68 (Description of Property Distributed); and Local Rule 15.69 (Petition To Include Proposed Distribution); (Amended effective 1/1/04)

(5) That no federal or California estate taxes are payable or that they have been paid;

(6) That income taxes and all other taxes (e.g., supplemental real property or personal property taxes, if any) have been paid or otherwise provided for;

(7) Whether the personal representative has complied with the provisions of Probate Code section 8800(d), concerning the change of ownership requirements of Revenue & Taxation Code section 480. (Amended effective 1/1/99)

(B) If estate taxes are payable or paid: 1) the petition must set forth whether said taxes were prorated pursuant to Probate Code section 970/20100 et seq. or the provisions of the will; and 2) the petition must reflect whether or not there are nonprobate assets includable in the gross estate for estate tax purposes. (Amended effective 7/1/05)

15.74 Spousal Property Election

Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to Probate Code section 13502 must be supported by a written election expressly indicating a consideration of the alternative procedures available pursuant to section 13650. Written elections pursuant to Probate Code section 13502 must contain an express acknowledgement that the inclusion of property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney fees. (Amended effective 1/1/10)

PART EIGHT
Joint Tenancies And Life Estates

15.75 (deleted effective 1/1/09)

15.76 (Reserved)

15.77 (deleted effective 1/1/09)

PART NINE
Guardianships And Conservatorships-General Provisions

15.78 Appointment Of Temporary Guardian Or Conservator

(A) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to be a guardian or conservator may be appointed as temporary guardian or conservator of the person or estate or both. The petition for the appointment of a general guardian or conservator shall be separate from the petition for the appointment of a temporary guardian or conservator. (Amended effective 7/1/05)

(B) Petitions for temporary appointment must be presented initially to the Probate Unit for review by the designated staff. The petitioner must provide an endorsed copy of the general petition and all other papers filed in support thereof. The clerk in the Probate Unit will file the temporary petition. At the request of the petitioner, the matter must then be 1) calendared by the clerk in the Probate Unit for hearing at least seven days thereafter; or 2) presented to the judge of the Probate Department to consider with a request for waiver of notice. (Amended effective 1/1/10)

15.79 (deleted effective 1/1/09)

15.80 (deleted effective 1/1/06)

15.81 Allowance Of Fees And Costs In Guardianships Or Conservatorships

(A) The petition must include an itemization of services rendered setting forth a description, the date, time expended and hourly rate for each service. (Amended effective 7/1/05)

(B) Costs are governed by Rule 15.67. (Renumbered effective 1/1/04)

15.82 (deleted effective 1/1/09)

15.83 (Reserved)

15.84 Waiver Of Account

(A) If Probate Code section 2628 (public benefit payments) is applicable, the guardian or conservator may petition the court for an order dispensing with accounts. Ex parte petitions pursuant to section 2628 will not be granted. (Amended effective 1/1/10)

(B) A final report setting forth the assets on hand must be filed upon termination of a guardianship or conservatorship even when accounts have been waived. (Amended effective 7/1/05)

15.85 Additional Powers

On the petition of the guardian or conservator at the time of appointment or later, the court may grant additional powers to the guardian or conservator as authorized by Probate Code sections 2590 and 2591. Such powers are not automatically granted; and, when requested, sufficient reasons must be shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the Letters of Guardianship or Conservatorship. (Amended effective 1/1/10)

15.86 Accounts

(A) The first account must be filed on or before the anniversary date of the order appointing the guardian or conservator; and subsequent accounts shall be filed at least biennially thereafter. The first account must be for a minimum period of nine months from date of appointment. (Amended effective 7/1/05)

(B) Where there are multiple wards or conservatees joined in a single guardianship or conservatorship proceeding, an account must reflect a separate accounting for each of them. (Amended effective 7/1/05)

(C) Each account except a final account must be accompanied by a report on the sufficiency of the bond, including 1) the total amount of bond currently posted; 2) which accounts are blocked and the balances thereof (referring to the filing date of the receipt

per Local Rule 15.26(B)); and 3) setting forth the annual income and assets subject to bonding as provided in Probate Code section 2320(c). (Amended effective 1/1/10)

(D) The financial institution account statement required by Probate Code section 2620(c) must consist of the most current statement showing the balance as of the close of the account period. Account statements for the entire period of the account are not required. (Amended effective 7/1/05)

(E) The financial institution account statements must be presented in the same sequence as the assets are listed in the schedule of property on hand. The petitioner must in addition highlight the following information contained on each account statement:

(1) Name, address of account holder;

(2) The account or property description number;

(3) The account type or property description;

(4) The statement period;

(5) The reported balance at the close of the accounting period. (Amended effective 7/1/05)

(F) Petitioner must file a reconciliation declaration when the reported balance on the financial institution account statement is not the same as stated in the schedule of property on hand. The declaration must explain the reason for the discrepancy between the balances listed. (Amended effective 7/1/05)

15.87 (deleted effective 1/1/09)

15.87.5 (Reserved)

PART TEN
Guardianships Of Minors

15.88 Appointment Of Guardian Of Minor

(A) Petitions for guardianships must contain an allegation as to whether or not the minor(s) has been or is a party to a civil action in which monetary damages are claimed. If the minor(s) is such a party, the file number of the action must be indicated, as well as the name of the court in which the case is pending (Local Form). (Amended and renumbered effective 1/1/09)

(B) Children with a common mother must be included in the same petition. Otherwise, separate petitions and case numbers shall be required. (Amended and renumbered effective 1/1/09)

15.89 Contested Guardianships

(A) If a proposed guardianship of a person is contested, the parties must participate in nonconfidential mediation utilizing Family Court Services (FCS) or a court-approved mediator retained by the parties. The referral to mediation must be made at the first hearing where any party objects to the guardianship. The referral to mediation may be made simultaneously with a referral to the Department of Health and Human Services (DHHS) for an investigation pursuant to Probate Code section 1513(a) or (c). (Amended effective 1/1/10)

(1) The order of referral to mediation must establish the date for filing and service of the mediation report. This date may be extended by order of the court or written agreement of the parties.

(2) There must be no peremptory challenge of any assigned FCS mediator.

(3) Other applicable procedures:

(a) There must be no orientation prior to the mediation.

(b) Attendance of children ages five and older at the mediation is required. The mediator may interview the children in the exercise of the mediator's discretion.

(c) If, after receiving notice, any party fails to appear for the mediation, the mediator may submit a report after meeting with those persons attending the mediation. If no party attends the mediation, the petition for guardianship must be dismissed.

(d) The mediator must assist in developing a parenting plan that protects the health, safety, welfare and best interest of the child.

(e) At the conclusion of the mediation, the mediator must submit a confidential report to the court and provide all of the parties with a copy of the report prior to the scheduled court date.

(f) If the parties reach an agreement that the mediator believes is contrary to the best interest of the child(ren), the mediator must set forth his/her recommendations addressing the best interests of the child(ren).

(g) If the parties do not reach an agreement during the mediation, the mediator must make recommendations to the court addressing the disputed issues. Such recommendations may include: appointment of counsel for the minor; appointment of a mental health professional; issuance of restraining orders; referral to Child Protective Services and such other actions as deemed reasonable and necessary.

(B) All parties must comply with the operating procedures of Family Court Services. Family Court Services must establish and publish its operating procedures so that they are available during normal business hours upon request of any party. The written procedure for lodging complaints against mediators must be available in Family Court Services.

(C) Reports of Family Court Services and Retained Mediators

(1) A mediation report from Family Court Services or a retained mediator presented at the regular law and motion calendar or a specially set hearing without witnesses may be adopted in whole or in part or rejected by the court. A party that contests the court's ruling may request an evidentiary hearing.

(2) The court may read and consider the report at the law and motion hearing or specially set hearing without witnesses making its interim ruling with respect to the issue of guardianship and visitation.

(3) The court hearing the issue at the trial must not consider the report until it has been admitted into evidence. Each party must have the right to cross-examine the preparer of the report.

(4) A party who intends to offer a mediation report into evidence at trial must give notice to Family Court Services or the retained mediator at least 20 days prior to the trial date and subpoena the preparer of the report at least five court days prior to the trial date. A Family Court Services mediator subpoenaed to testify at trial must be paid a reasonable fee.

(5) The deposition of a Family Court Services mediator must be noticed at least five court days before the deposition date; and the deposition must be taken after 3:00 p.m. at Family Court Services unless there is a stipulation that the deposition be taken at a different time and location. Depositions taken at Family Court Services must conclude or recess by 5:00 p.m.

(6) Unless disclosed in other proceedings, the following documents are deemed confidential and must not be available for inspection by the parties or their attorneys without a court order issued upon a showing of good cause: Child Protective Services reports and files; Criminal Investigation and Identification records; medical reports; mental health professional's reports; restricted law enforcement reports; and National Council of Alcohol and Drug Dependence reports.

(Added effective 7/1/05)

15.89.01 Guardianships: Visitation With Ward

(A) If, after appointment of a guardian of the person, a visitation dispute arises between the guardian and a relative as defined under Probate Code Section 1513(g), the person seeking visitation may file a Request for Confidential Mediation Regarding Visitation.

(1) The Request shall be filed in the Probate Division using the local form.

(2) Upon filing, the matter shall be referred to Family Court Services where an

(3) appointment for the parties shall be scheduled.

(4) The parties shall participate in confidential mediation and Family Court Services shall make no recommendations and shall not issue a report to the court unless the parties reach an agreement, the mediator learns that the child is in danger or the court determines circumstances warrant nonconfidential mediation.

(5) Any agreements reached shall be reported by the mediator. A copy of the reported agreement shall be provided to each party participating in the mediation, and a copy shall be placed in the "confidential portion" of the court file.

(6) There shall be no court hearing on the matter, and the agreement shall not result in a court order, unless the party seeking an order files a Request for Court Ordered Visitation.

(7) No guardianship case will be permitted more than two referrals for confidential mediation in any twelve month period, unless authorized by the court upon a showing of good cause.

(B) Parties seeking a court order for visitation with a ward must file a Petition and Order for Nonconfidential Visitation.

(1) The Petition shall be filed in the Probate Division using the local form.

(2) Upon filing, the matter shall be set for hearing.

(3) The requesting party shall serve a copy of the Petition, with notice of the hearing date, by mail on the appointed guardian(s) and all persons listed under item #6 of the Petition, at least 15 days prior to the hearing date.

(4) Any Response shall be filed and served five days prior to the hearing date.

(5) At the hearing, the court may deny the request, may set the matter for an evidentiary hearing, or may order the parties to participate in non-confidential or confidential mediation with Family Court Services, or with a private mediator selected from the court-approved list of Probate mediators.

(6) If the parties are ordered to mediation, the order must establish a date for further hearing, and Rule 15.89 shall apply.

(Amended effective 1/1/08)

15.90 Nonrelative Guardianship

If investigation is required pursuant to Probate Code section 1543, the petition for appointment of guardian must be calendared for hearing not less than 45 days after filing in order to allow sufficient time for completion of the investigation. A copy of the notice of hearing must be served on the Guardianship Unit of the Sacramento County Department of Health & Human Services not less than 40 days before the date of the hearing. (Amended effective 1/1/10)

15.91 Effect Of Other Proceedings

A guardianship of the person will not be granted by the Probate Court under any of the following circumstances: (a) Family Law Court has jurisdiction over custody of the proposed ward; (b) adoption proceedings are pending; or (c) the minor is subject to the jurisdiction of the Juvenile Court. (Effective 1/1/94)

15.92 Duties Of Guardian—Support By Parents

Guardianship funds must not be used for a minor's support, except upon a showing of the parents' financial inability or other circumstances which would justify the same. If there is a claim that the parents lack financial ability to provide support, the parents must file Family Law Income and Expense and Property Declarations (FL-150) and Property Declaration (FL-160) in accordance with California Rules of Court. (Amended effective 1/1/06)

15.93 Final Account And Report

(A) Waiver of guardian's final account will be permitted for good cause. (Amended effective 1/1/98)

(B) Waiver of a guardian's account by a ward who has attained the age of majority will not be accepted unless the ward personally appears and confirms the waiver or a written waiver by the ward is filed which includes a complete list of the assets to be distributed to the ward.

(C) The final report and/or account must include a description of the remaining assets on hand to be distributed to the ward. (Amended effective 7/1/05)

(D) The final report and/or account required upon termination of the guardianship of the estate must be filed within 90 days of termination pursuant to Probate Code sections 1600-1601. (Amended effective 7/1/05)

15.94 Termination And Discharge

(A) One year after majority, upon a proper showing, the final discharge will be granted in the same manner as the discharge of the fiduciary of a decedent's estate. For this purpose, a printed form containing the declaration for final discharge and the final discharge is available from the Clerk of the Court (Local Form). (Amended effective 7/1/00)

(B) Upon the ward's attaining the age of majority, the guardianship of the person and the estate terminates pursuant to Probate

Code section 1600, without court order. (Amended effective 1/1/10)

15.95 (deleted effective 1/1/97)

15.96 (deleted effective 1/1/09)

PART ELEVEN
Conservatorships

15.97 Multiple Conservatees

There must be a separate proceeding for each person for whom the appointment of a conservator is sought, except that conservatorships for both spouses may be filed in the same file. (Amended effective 7/1/05)

15.98 (deleted effective 1/1/97)

15.99 Termination Of Conservatorship

A petition for termination of conservatorship will not be granted unless the conservatee personally appears in court or is excused after the filing of a physician's affidavit or declaration setting forth the reasons why the conservatorship is no longer required. (Amended effective 1/1/97)

15.100 Final Account And Report

(A) When a final account or report is filed, notice of hearing must be given pursuant to Probate Code section 2621. If the conservatee is deceased, notice of hearing must be given to the personal representative or trustee of conservatee's Living Trust. If the conservator is also the personal representative of the deceased conservatee's estate or there is no personal representative, notice must be given to the deceased conservatee's heirs and devisees. (Amended effective 1/1/10)

(B) A final account must be required on termination of the conservatorship of an estate except under the following circumstances: (1) the former conservatee who has been restored to full capacity waives the accounting; (2) if the conservatee is deceased, when an account is waived by those persons entitled to receive distribution of the estate as provided in Probate Code section 10954; except that if conservator is also the personal representative of the conservatee's estate, waivers must be required by all heirs or devisees; or (3) when the court has ordered that accounts are not required pursuant to Probate Code section 2628 and the conditions of that section are otherwise met. (Amended effective 7/1/05)

(C) The report must include a statement of the specific assets on hand. (Amended effective 7/1/05)

(D) The final report and/or account must be filed within 90 days of termination of the conservatorship of the estate. (Amended effective 7/1/05)

15.101 Sale Of Conservatee's Residence

Sale of a conservatee's residence requires prior authorization in compliance with Probate Code section 2540(b). Petitions for authorization of sale of the conservatee's residence and/or authorization to execute a listing agreement for sale of the conservatee's residence will be considered only upon a calendared motion with notice given pursuant to section 1460 (general mailed notice) and section 2702 (special notice). If permission is granted to sell the conservatee's residence, a listing agreement may be approved ex parte, subject to section 2702. (Amended effective 1/1/10)

15.102 Restricted Facilities And Psychotropic Medication

(A) Unless prior specific court authorization is obtained upon notice duly given as provided in Local Rule 15.103, a conservatee with dementia shall not:

(1) be given mood or cognition medication for treatment of dementia involuntarily, or

(2) be placed where he or she is not completely free to leave at will.

(B) This will be effective immediately for petitions to establish a conservatorship filed after the effective date of this rule, and for existing conservatorships, at the time the conservatorship is subject to review pursuant to section 1850. (Added effective 1/1/99)

15.103 Duties Of Attorneys Appointed As Counsel For Conservatees Or Proposed Conservatees

Attorneys who are appointed as counsel for conservatees pursuant to Probate Code sections 1470, 1471, or 2356.5 have the

following ethical obligations:

(A) Clients Who Are Non-Communicative, or Clearly Delusional or Not Opposed to Request Before the Court

If the client is noncommunicative, or clearly delusional, or not opposed to the request before the court, the attorney must evaluate the request before the court and must report to the court, in writing, his or her observations and recommendations as to what would be in the client's best interests. In its discretion, the court may waive the requirement of a written report by the attorney and permit an oral report to be made on the record. Where a conflict arises between the attorney and his or her client concerning the best interests of the conservatee, the court may appoint a separate attorney to represent the conservatee.

(B) Clients Who Are Communicative, Alert and Are Opposed to Request Before the Court

If the client is communicative, alert and opposed to the request before the court, and if the attorney has a good faith belief that sufficient grounds exist to support the position being taken by the client, the attorney must use all reasonable and appropriate means to obtain the result being sought by the client.

(C) Clients Who Have Impaired Judgment and Are Opposed to the Request Before the Court

If the client appears to have impaired judgment and is opposed to the request before the court, the attorney must report to the court, in writing, the attorney's observations and recommendations as to what would be in the client's best interests, as well as the fact that the client is opposed to the request and the apparent reasons for the opposition. In its discretion, the court may waive the requirement of a written report by the attorney and permit an oral report to be made on the record. The attorney must also assure that the client is given the opportunity to directly address the court, if reasonably possible.

(D) Attorney to Disclose Prior Relationship

The attorney must disclose to the court and all parties whether the attorney currently represents, or has previously represented, the conservator or proposed conservator. (Added effective 7/1/06)

15.104 Video Presentation Of Conservator's Duties

Prior to the hearing for appointment, the proposed conservator must verify in writing that he or she has viewed an approved videotaped presentation on the duties and responsibilities of conservators. The approved presentations are either one prepared by this court or the one prepared by the Alameda Superior Court in coordination with the Judicial Council. These video presentations are available for viewing during regular court business hours at the following locations: Sacramento County Law Library, downtown Courthouse; Sacramento County Law Library, Family Relations Courthouse; and the Self-Help Center, Family Relations Courthouse. The requirements of this rule may be dispensed with if the attorney for the proposed conservator so requests and certifies in writing that the duties and responsibilities of the conservator have been fully explained to the proposed conservator. (Amended effective 1/1/10)

PART TWELVE
OTHER PROTECTIVE PROCEEDINGS
(Heading amended effective 1/1/97)

15.105 Claims Of Minors And Incompetents

(A) Compromise of the claim of a ward or conservatee must be made in the manner provided by Probate Code section 2500 et seq., and in accordance with Local Rules 10.01 and 10.02. (Amended effective 7/1/05)

(B) If there is a request to place the proceeds of a judgment or compromise for a minor or incompetent into a trust (revocable, special needs or otherwise), or a CUTMA custodianship if the value of the transfer exceeds $20,000, then the assigned department must first enter judgment or approve all other proper matters (e.g., the amount of the settlement, terms of payment, and attorney fees). The plaintiff must then file a petition, to be set in the Probate Unit, for a hearing as to the establishment, terms, and conditions of the proposed placement. (Amended effective 7/1/05)

(C) Upon approval of the trust described herein, the court must set a hearing date 14 months later for status on the filing of the first account. (Amended effective 7/1/05)

15.105.5 Trusts Created Pursuant To Court Order

(A) A trust created by order of the probate court for the benefit of a minor or incompetent adult pursuant to Probate Code sections 2580 et seq., 3100 et seq. or 3600 et seq. will ordinarily be required to contain the following provisions to be effective during the lifetime of the incompetent adult or during the minor's minority.

(1) Trustee must post bond for assets and income of the trust.

(2) Trustee must file accounting consistent with the requirements of Probate Code section 2620 and Probate Code section 1060 et seq.

(3) Prior court approval shall be required for investments other than those listed in Probate Code section 2574(a).

(4) Trustee must obtain prior court approval for gifting, hypothecation, borrowing, loans, and sales of assets as would be required by a guardian or conservator of the estate.

(5) Prior court approval shall be required for payments of fees to attorneys, conservators, guardians and trustees.

(6) The trust must pay for court approved court investigation costs, fees for guardians, conservators, their attorneys and court appointed counsel as well as other costs of administration approved by the court.

(7) Prior court approval shall be required for appointment of a successor trustee, amendment, revocation, and termination of the trust.

(8) Prior court approval shall be required for appointment of advisory committee members and for requested fees. (Amended effective 7/1/05)

(B) The probate court will ordinarily appoint an attorney as guardian ad litem to represent the interests of the minor or incompetent adult in the proceeding to establish the trust. (Added effective 7/1/00)

(C) A petition that includes a request for approval of a trust advisory committee must set forth the member's qualifications or relationship and his/her expertise, if any, with federal/state public benefit programs (i.e., S.S.I., MediCal). (Added effective 7/1/04)

(D) The petition for approval of the trust must set forth the basis for the proposed distribution of the trust upon the death of the life beneficiary or upon termination of the trust. (Added effective 7/1/04)

15.106 Proceeding For Spousal Property Transaction

As to petitions pursuant to Probate Code sections 3100 et seq.:

(A) The petition must be supported by a declaration of a licensed physician or licensed psychologist within the scope of his or her licensure as to the capacity of the non-petitioning spouse (Probate Code section 810 et seq.). (Amended effective 1/1/10)

(B) Counsel will be appointed for the nonpetitioning spouse if the petition proposes a substantial transfer to the petitioner. (Amended effective 1/1/97)

(C) When the petition is predicated upon the nonpetitioning spouse's qualification for Medi-Cal benefits, notice shall also be given to the Director of the California Department of Health Care Services. (Amended effective 1/1/09)

(D) In petitions to transfer assets, related to Medi-Cal eligibility, the petitioner shall provide the court with schedules showing such calculations as would be required in an administrative hearing to the extent that the Community Spouse Resource Allowance or the Minimum Monthly Maintenance Needs Allowance would be in issue. The court will not make orders modifying the Community Spouse Resource Allowance nor the Minimum Maintenance Monthly Needs Allowance but may make findings as to the proper amounts as needed to support the order. (Added effective 1/1/99)

(E) The court will not issue general support orders in petitions under Probate Code sections 3100 et seq. (Amended effective 1/1/10)

15.106.5 Proceedings Under Probate Code Sections 3410 Et Seq (Heading amended effective 1/1/10)

(A) Petitions filed under sections 3410 et seq. must be filed in a separate proceeding under the name of the minor, and must set forth jurisdictional facts and state the amount to be paid, by whom, and what reimbursement for costs and fees is requested, and request the deposit of the balance of the proceeds in a specific bank or savings and loan association in the manner provided by law. (Amended effective 7/1/05)

(B) If the petition merely seeks the deposit of funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorney's fees are sought, the matter must be set for hearing on the court's regular calendar. (Added effective 1/1/97)

(C) The order must provide for the persons holding funds to make one check payable to the persons entitled to costs and fees and must provide for the issuance of a second check for the amount to be deposited, payable to the proposed trustee and the specific bank or savings and loan association. (Amended effective 7/1/05)

PART THIRTEEN
Trusts

15.107 In General

Accounts filed by trustees must be in the form and otherwise conform to the requirements in these rules for accounts by personal representatives in decedents' estates. (Amended effective 7/1/05)

15.108 First Appearance By Trustee Requires Statement Of Address

All petitions, objections, responses or other first appearance by a trustee must contain an allegation stating the address of the trustee for purpose of personal service of process. (Amended effective 7/1/05)

15.109 Trust Accountings

(A) A petition for approval of a trust accounting that includes disbursements for trustee fees or attorney fees must include evidence to support the payment of fees in compliance with the terms of the trust. If "reasonable fees" are authorized by the trust or if compensation is paid based on Probate Code section 15681, the trustee must set forth how the "reasonable fee" was calculated. (Amended effective 7/1/06)

(B) Whenever a trust accounting period exceeds two years, the following will apply:

(1) The schedules for receipts and for disbursements must be categorized into subschedules reflecting the particular income sources or payees from whom there are more than twelve entries per accounting period.

(2) The schedule for disbursements must contain a separate listing for all compensation paid to any fiduciary, attorney or accountant during the accounting period from trust assets.

(Added effective 7/1/05)

(C) Notice of the hearing in the manner required by Probate Code section 17203 must be provided to the Directors of the Department of Health Services, Department of Developmental Services, and the Department of Mental Health at the Sacramento office on a petition for approval of an account of a special needs trust established pursuant to section 3604. (Amended effective 1/1/10)

15.110 Fees

Requests for approval of fees must be categorized by services performed and must include the hourly rate, hours performed, and total amount of fees rendered. (Amended effective 7/1/05)

15.111 Report Of Trustee

(A) A report must accompany each account of a trustee and shall include the following:

(1) A concise reference to the purpose of the trust and how they have been satisfied by the trustee during the period of the account;

(2) A list of the beneficiaries (both present and future), the address, relationship to the trustor, whether they are a minor or an adult, and the beneficiary's age, if age is relevant;

(3) A brief summary of distributions made to or for their benefit, as reflected in the account;

(4) Investment objectives, and results with reference to the purpose of the trust, by setting forth a brief summary of the account measured in terms of the specific trust objectives and requirements.

(5) The trustee's address for personal service of process.

(Amended effective 7/1/05)

(B) The report must not merely recite what has been done but must relate the activities reflected in the account to the purposes and persons for which the trust was created. (Amended effective 7/1/05)

15.112 Appointment Of Minor's Counsel

(A) Counsel appointed by the court pursuant to Probate Code section 1470 must have the following duties:

(1) Interview the minor;

(2) Review the court file and all accessible records and make any further investigation necessary to ascertain facts relevant to the guardianship or visitation.

(Amended effective 1/1/10)

(B) Counsel appointed by the court pursuant to section 1470 must be entitled to the following:

(1) Reasonable access to the minor with adequate notice;

(2) Notice of all proceedings, including requests for examination affecting the minor;

(3) Access to all pleadings and records, including medical and school records of the minor, subject to the limitations of Rule 15.89(C)(6);

(4) The right to object to physical or psychological evaluations for purposes of trial that have not been ordered by the court;

(5) The right to assert on behalf of the child any privileges for purposes of discovery or trial;

(6) The right to petition for an order authorizing independent psychological and/or physical examination;

(7) Subject to the provisions of Rule 15.89(C)(6), with notice to all parties and Child Protection Services, petition the court for an order authorizing release of discoverable records concerning the minor. The court must conduct an in camera review of the requested documents before ruling on the petition. Counsel must not disclose to any person any records produced unless authorized by order of the court.

(Amended effective 1/1/09)

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San Benito County
Probate Rules

This county has no specific local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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San Bernardino County
Probate Rules

Effective January 1, 2010

CHAPTER 20
PROBATE RULES
(Renumbered as Chapter 20, eff. July 1, 2007)

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CHAPTER 20
PROBATE RULES
(Renumbered as Chapter 20, eff. July 1, 2007)

PART ONE
GENERAL PROCEDURAL GUIDE

20-101 WRITTEN POLICY MEMORANDA

(a) From time to time questions of policy with respect to probate matters will be determined by the Judges, reduced to writing, and made available to members of the Bar.

(b) Unless specific written orders are issued to the contrary, these policies are applicable in Court Districts.

(Rev. Dec. 1993. Renumbered as Rule 20-101 eff. July 1, 2007.)

20-102 PROBATE NOTES

(a) Calendar notes are usually available ten (10) days before the hearing date. Notes are available on the Internet at www.sbcounty.gov/courts (then select the Probate pull down menu and choose "Probate Notes"). The notes may also be obtained from the probate clerk's office.

(b) When a question arises concerning a particular note, the Probate Examiners may be contacted for clarification of the note by sending an email to ProbateNotes@courts.sbcounty.gov.

(c) When a case is not recommended for approval, the Petitioner or his attorney may request a four (4) week continuance from the courtroom clerk if the matter was not previously set or continued by the Court.

(d) When a case (except a petition for appointment of a guardian or conservator) is recommended for approval, the petitioning party or counsel may elect not to appear at the hearing. A non-appearance at the hearing by a petitioning party may be deemed to be a submission on the recommendation in the probate notes. The petitioning party is advised, however, that during the hearing the court's ruling may deviate from the relief requested or the recommendation in the probate notes. Also, other interested persons may appear at the hearing which may result in a change in the court's ruling or a continuance of the hearing. In all instances, appearances shall be made at hearings on petitions for appointment of a guardian or conservator, including the appointment of successors.

(Eff. July 1, 1998 as amended January 1, 1999. As amended, eff. January 1, 2003, and January 1, 2004. Renumbered as Rule 20-102 and amended, eff. July 1, 2007. As amended, eff. July 1, 2008.)

20-105 COMMISSIONERS AND TEMPORARY JUDGES

Before the call of the calendar, parties may be advised in open Court that the matters on the calendar will be heard by a Commissioner or a temporary Judge. Unless the Court is informed to the contrary, all parties shall then be deemed to have stipulated that such person may hear the matter as a temporary Judge, and the minutes will so read.

(Former Rule 106, rev. Dec. 1993. Renumbered as Rule 106 and amended, eff. July 1, 1998. Renumbered as Rule 20-105, eff. July 1, 2007.)

PART TWO
FORMS, NOTICES, AFFIDAVITS, AND DECLARATIONS

20-203 NOTICE RE SPECIAL LETTERS

Petitions for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, or any other person who, on examination of the applicant, appears to be equitably entitled to notice. If it appears that a *bona fide* contest exists, the Court will consider appointing a neutral person or corporation as special administrator.

(Former Rule 205, rev. Dec. 1993. Renumbered as Rule 203 and amended, eff. July 1, 1998. Renumbered as Rule 20-203, eff. July 1, 2007.)

20-204 PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED

When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set by means of a new petition, an amended petition, a new notice, or otherwise, except by order of the Court.

(Former Rule 206, rev. Dec. 1993. Renumbered as Rule 204 and amended, eff. July 1, 1998. Renumbered as Rule 20-204, eff. July 1, 2007.)

PART THREE
EXECUTORS AND ADMINISTRATORS

20-302 SPECIAL ADMINISTRATION

A petition for appointment of special administrator may be filed in a separate petition following or concurrently with a petition for probate. Special letters of administration will not normally be granted unless a petition for probate and for general letters is on file. Special letters may be revoked if general administration is not timely pursued.

(Former Rule 303, rev. Dec. 1993. Renumbered as Rule 302 and amended eff. July 1, 1998. Renumbered as Rule 20-302, eff. July 1, 2007.)

20-303 STATEMENT OF ADDRESS

A proposed nonresident personal representative who completes section 4.g. of the Judicial Council form Petition for Probate (DE-111, as Rev. Jan. 1, 2005), including the specification of the proposed personal representative's permanent address, shall be deemed to have satisfied the requirements of Probate Code section 8573 regarding the filing of a statement of permanent address. No separately-filed document is required. An appointed nonresident personal representative who changes permanent residence, however, must still file a change of permanent residence with the court as required by the second sentence of Probate Code section 8573.

(Eff. July 1, 2008.)

PART FOUR
BONDS

20-402 BOND ON PETITION FOR AUTHORITY TO BORROW MONEY

Petitions for authority to borrow money should set forth the amount of bond in force and the amount of loan proceeds. If no additional bond is required, or if bond is waived, that fact should be alleged.

(Rev. Dec. 1993. Renumbered as Rule 20-402, eff. July 1, 2007.)

PART FIVE
INDEPENDENT ADMINISTRATION

20-501 PRELIMINARY DISTRIBUTION

If there is to be a preliminary distribution to a trustee who has not been appointed and who has not been given at least fifteen

(15) days notice of a hearing on such petition, the trustee must file with the Court a consent to act as trustee before the distribution is ordered.

(Former Rule 504, rev. Dec. 1993. Renumbered as Rule 501, eff. July 1, 1998. Renumbered as Rule 20-501, eff. July 1, 2007.)

PART SIX
PETITION, MOTIONS, INVENTORIES, AND ORDERS

20-601 CAPTIONS

The captions in all petitions and motions filed in probate matters shall set out a complete, correct and concise summary of the prayer in order that proper notice may be given. No petition will be accepted for filing without such caption. All captions shall include a reference to the Probate Code Section which authorizes the relief requested.

(Rev. Dec. 1993. Renumbered as Rule 20-601, eff. July 1, 2007.)

20-603 FILING OF PLEADINGS

(a) Every petition, including but not limited to petitions for probate, conservatorship and guardianship, shall be accompanied by a Certificate of Assignment.

(b) All supporting papers for every petition must accompany the petition or be filed within a reasonably short time thereafter.

(c) All petitions shall be accompanied by a proposed Order.

(Eff. July 1, 1998. Renumbered as Rule 20-603, eff. July 1, 2007.)

20-605 COMPLETE ADDRESS IN PETITION OR REPORT

(a) When an address is required in a petition or report a full and complete mailing address should be set forth, or a special allegation made explaining why the petitioner cannot comply with this requirement.

(b) Nothing herein is intended to or should prevent an immediate filing of the original petition although complete addresses are unknown but may be ascertained within a few days. New or corrected addresses should be reported to the probate procedures clerk in writing when the fact becomes known and appropriate steps to give proper notice shall be taken.

(Rev. Dec. 1993. Renumbered as Rule 20-605 and as amended, eff. July 1, 2007.)

20-606 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

(a) The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute. The caption should specify in detail exactly what instructions are sought. A caption merely entitled "Petition for Instructions" is incomplete and shall not be used.

(b) The manner in which an estate should be distributed can be determined only by a petition for distribution or by a petition to determine heirship, not a petition for instructions.

(Former Rule 611, rev. Dec. 1993. Renumbered as Rule 606 and amended, eff. July 1, 1998. Renumbered as Rule 20-606, eff. July 1, 2007.)

20-607 EX PARTE MATTERS

Attorneys for parties should call the probate clerk to determine the times dates and courtroom at which the Judge will consider ex parte matters.

(Rev. Dec. 1993. Amended, eff. January 1, 2003. As amended, eff. July 1, 2003. Renumbered as Rule 20-607, eff. July 1, 2007.)

20-609 EX PARTE ORDERS WILL NOT BE GRANTED UNLESS SPECIAL NOTICE IS WAIVED

All applications for ex parte orders must allege the existence or non-existence of requests for special notice on file. If any such notice has been requested, the ex parte application must contain a waiver of the request, a declaration that the requesting party was given at least twenty-four (24) hours' telephonic notice of the application, or a statement that the subject of the application is not covered by Probate Code section 1250(c).

(Rev. Dec. 1993, as amended, eff. July 1, 1998. Renumbered as Rule 20-609, eff. July 1, 2007.)

20-610 DESCRIPTION OF REAL PROPERTY

Real property of the estate shall be fully described in the inventory and all petitions and orders dealing with it by the legal description, assessors parcel number and street address, if any. If the property is unimproved it should be so noted.

(Former Rule 617, rev. Dec. 1993. Renumbered as Rule 610 and amended, eff. July 1, 1998. Renumbered as Rule 20-610, eff. July 1, 2007.)

20-611 SPECIFICALLY BEQUEATHED PROPERTY

A petition for sale of stock or personal property must allege whether the property is specifically bequeathed. If the property is so bequeathed, the consent of the legatee must accompany the petition.

(Eff. July 1, 1998. Renumbered as Rule 20-611, eff. July 1, 2007.)

20-612 REAL PROPERTY DISTRIBUTION ORDERS

Orders containing provisions for the distribution of real property shall set forth a mailing address of the distributee.

(Former Rule 614, rev. Dec. 1993. Renumbered as Rule 612 and amended eff. July 1, 1998. Renumbered as Rule 20-612, eff. July 1, 2007.)

20-613 FAMILY ALLOWANCE: ORDERS FOR CONTINUING PAYMENTS MUST STATE TERMINATION DATE

All orders for family allowance shall include the commencement date and the termination date for payments. The Court will not make orders for continuing payments of family allowance to run until the further order of the Court.

(Former Rule 610, rev. Dec. 1993. Renumbered as Rule 613 and amended eff. July 1, 1998. Renumbered as Rule 20-613, eff. July 1, 2007.)

20-614 PROBATE ORDERS

(a) All petitions, orders or decrees shall be drawn and submitted by the petitioner or attorney involved. The caption shall clearly and fully identify its contents. A caption merely entitled "Petition" or "Order" is incomplete and shall not be used.

(b) All orders or decrees in probate matters must be complete in themselves. They shall set forth all matters actually passed upon by the Court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based.

(c) While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reported therein, it is not sufficient in any order to recite merely that the petition as presented is granted or that the relief sought in the petition on file is given. Orders settling accounts or orders made on waivers of account must also contain a statement as to the balance and description of the estate on hand, specifically noting the amount of cash included in said balance.

(d) Three (3) lines of the contents of the order must appear on the page upon which the Judge's signature is affixed. In no case should any matter appear after the signature of the Judge.

(Former Rule 613, rev. Dec. 1993. Renumbered as Rule 614 and amended, eff. July 1, 1998. As amended eff. January 1, 2004. Renumbered as Rule 20-614, eff. July 1, 2007.)

20-615 NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS

(a) If, through any inadvertence, the minute order or the signed decree fails to state the order actually made by the Court, the Court will on its own motion, supported by an affidavit if deemed necessary, make a nunc pro tunc order correcting the mistakes.

(b) The nunc pro tunc order must not take the form of an amended order and should be substantially in the following form: "On the Court's own motion, to correct a clerical error, the (identify the order to be corrected, giving the title and the date thereof) is corrected by striking the following: (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter)."

(c) The original order is not to be physically changed by the clerk, but it is to be used in connection with the nunc pro tunc order correcting it.

(d) To prevent further errors, not less than a complete clause or sentence should be stricken, even if it is intended to correct one word or a figure.

(e) "It is so ordered Nunc Pro Tunc as of (date)" should be just prior to the Judge's signature.

(Former Rule 616, rev. Dec. 1993. Renumbered as Rule 615, eff. July 1, 1998. Renumbered as Rule 20-615, eff. July 1, 2007.)

20-617 DEATH OR MISSING PERSONS

Proceedings should not be initiated under Probate Code Section 200 to establish the death of missing persons. Rather, the provisions of Part 12 of Division 7 (commencing at Section 12400) are to be used.

(Former Rule 618, rev. Dec. 1993. Renumbered as Rule 617, eff. July 1, 1998. Renumbered as Rule 20-617, eff. July 1, 2007.)

PART SEVEN
CREDITORS' CLAIMS

PART EIGHT
SALES

20-801 CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS

(a) A condominium is an interest in real property and must be sold as such. A community or cooperative apartment is personal property and must be sold as such. However, the overbid on such assets will be computed on the same basis as in sales of real property, and brokers' commissions will be allowed on the same basis as in sales of real property.

(b) The sale of a cooperative apartment will not be confirmed subject to the purchaser's later obtaining the acceptance of a Board of Directors or other governing body; therefore, the prospective purchaser should obtain acceptance before seeking Court confirmation.

(Former Rule 805, rev. Dec. 1993. Renumbered as Rule 801, eff. July 1, 1998. Renumbered as Rule 20-801, eff. July 1, 2007.)

20-802 SALE OF REAL AND PERSONAL PROPERTY AS A UNIT

When real and personal property of the estate is sold at a private sale as a unit, the petition for confirmation of sale shall clearly set forth the reasons for belief on the part of the personal representative that such sale is in the best interests of the estate. Sales of furniture and furnishings with dwelling houses, water stocks with lands served thereby, and similar transactions will require no detailed explanation. Sales of unrelated personal property should, however, be explained in detail.

(Former Rule 806. Rev. Dec. 1993. Renumbered as Rule 802 and amended, eff. July 1, 1998. Renumbered as Rule 20-802, eff. July 1, 2007.)

20-803 TANGIBLE PERSONAL PROPERTY

(a) Necessity for Appraisal. Whenever a Court order is being requested to approve or confirm the sale of tangible personal property, whether such order is or is not required by the Probate Code, an appraisal by a Probate Referee must first be made and filed. When necessary, a partial inventory and appraisement may be filed for this purpose, or a letter appraisal may be obtained from the Court appointed Referee or an alternate appraiser if authorized in accordance with Probate Code Section 8903.

(b) Commissions. Commissions on sales of tangible personal property will be allowed only to one holding a broker's license authorizing him to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. The amount of the commission is within the Court's discretion and will not ordinarily exceed (1) six percent (6%) as to sales in which a broker procured the bid presented to Court for confirmation or (2) three percent (3%) as to sales in which no broker procured the bid presented for confirmation.

(Former Rule 811, rev. Dec. 1993. Renumbered as Rule 803, eff. July 1, 1998. Renumbered as Rule 20-803, eff. July 1, 2007.)

20-804 SALES OF DEPRECIATING AND PERISHABLE PROPERTY

Vehicles such as automobiles and mobile homes may be sold as depreciating property. Efforts to expose the property prior to sale

should be shown in either the report and final account or the petition to approve such sale (unless such sales are made under I. A. E. A.).

(Former Rule 812, rev. Dec. 1993. Renumbered as Rule 804, and amended, eff. July 1, 1998. Renumbered as Rule 20-804, eff. July 1, 2007.)

20-805 SALES OF SECURITIES

A verified petition for the sale of stocks, bonds, or other securities must set forth a minimum sale price as to all securities not listed on an established exchange or to be sold through a national market system on an interdealer quotation system by an S.E.C. registered broker dealer during the regular course of business. If the securities are "closely held", the petition must set forth the basis for fixing the minimum sales price.

(Former Rule 813, rev. Dec. 1993. Renumbered as Rule 805 and amended, eff. July 1, 1998. Renumbered as Rule 20-805, eff. July 1, 2007.)

20-806 BROKER'S COMMISSIONS

(a) On sales subject to Court confirmation, unless justified by special circumstances, the Court will not approve payment of a broker's commission in excess of (1) six percent (6%) as to sales in which a broker procured the bid presented to Court for confirmation or (2) three percent (3%) as to sales in which no broker procured the original bid presented for confirmation.

(b) Special circumstances may include the fact that the property has an appraised value or sales price of $10,000.00 or less or the property is undeveloped land. Under such circumstances the Court will not approve payment of a broker's commission in excess of (1) ten percent (10%) as to sales in which a broker procured the bid presented to Court for confirmation; or, (2) five percent (5%) as to sales in which no broker procured the bid presented for confirmation.

(Eff. July 1, 1998. Renumbered as Rule 20-806, eff. July 1, 2007. Amended, eff. July 1, 2008.)

20-807 COURT CONFIRMATION OF PRIVATE SALES

(a) Bid Deposit. Ten percent (10%) of the total sales price must be deposited with the personal representative. However, exception may be made under special circumstances, for example when the sale is FHA or VA financed.

(b) Junior Deeds of Trust. The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate. Such showing may require a showing or representation of efforts that were made to sell for cash or a showing of knowledge on the part of the heirs and devisees and lack of objection to acceptance of a junior deed of trust.

(c) Vesting of Title. The petition for confirmation must set forth the vesting of title in the buyer. The Court will not confirm a sale to a "nominee".

(d) Specifically Devised or Bequeathed Property. A sale of specifically devised or bequeathed real or personal property ordinarily will not be confirmed unless the written consent of the specific devisee or legatee is filed with the petition for confirmation.

(e) Notice of Hearing on Report of Sale and Petition for Order Confirming Sale of Real Property. In addition to all notices of hearings on return of sale required by law, notice should be given to (1) any specific devisee of such property, (2) any agent for the bid being presented to Court, and (3) all beneficiaries or heirs.

(f) Earnest Money Deposit by Increased Bidder. When a sale is confirmed to an overbidder, the overbidder, at the request of the personal representative, must submit at the time of the hearing cash or a certified or cashier's check in the amount of ten percent (10%) of the initial overbid. The personal representative should notify all known anticipated overbidders of this requirement.

(g) Overbid Form. The personal representative or counsel may obtain from the Court clerk a form to be completed on the overbid. This form is to be returned to the clerk before the order confirming the sale will be signed.

(h) Absence of Attorney for Estate at Confirmation Hearing. If the estate's attorney is absent from the hearing, the hearing will be continued, except where the fiduciary is present and requests that the sale proceed without the attorney.

(Former Rule 823, rev. Dec. 1993. Renumbered as Rule 807 and amended, eff. July 1, 1998. As amended, eff. July 1, 2006. Renumbered as Rule 20-807, eff. July 1, 2007.)

PART NINE
ACCOUNTS, FEES AND DISTRIBUTIONS

20-901 ACCOUNTING REVIEW DATES

Accounting review dates are scheduled by the court in matters where an accounting is required. Accountings (or a status report in probate proceedings) shall be filed thirty (30) days prior to the accounting review date. Should the accounting (or status report) not be filed timely, the review date shall be continued to the date of the accounting. In the event no account or status report is filed, the review shall be continued as an Order to Show Cause proceeding and both the estate representative and counsel shall be cited in to show cause why an accounting has not been filed. This rule is applicable to probate, guardianship, conservatorship and trust accountings.

(Eff. July 1, 1998. Amended, eff. January 1, 2003. As amended eff. July 1, 2003. Renumbered as Rule 20-901 and as amended, eff. July 1, 2007.)

20-903 ATTORNEY'S SIGNATURE

All accounts, petitions, and other pleadings, which include a request for attorney's fees, whether statutory or extraordinary in nature, shall also be signed by the attorney of record who joins in the petitioner's request for said fees.

(Former Rule 905, rev. Dec. 1993. Renumbered as Rule 903, eff. July 1, 1998. Renumbered as Rule 20-903, eff. July 1, 2007.)

20-904 EXTRAORDINARY COMPENSATION

Applications for extraordinary compensation will not be considered unless both the caption and prayer of the petition, and the notice of hearing of the petition, contain a reference to the application for extraordinary compensation. Such applications must be accompanied by an itemized description of services rendered, time expended, and hourly rate. Ordinarily, a request for extraordinary compensation is made when a petition for final distribution is filed.

(Former Rule 907, rev. Dec. 1993. Renumbered as Rule 904 and amended eff. July 1, 1998. Amended eff. January 1, 2003. As amended eff. July 1, 2003. Renumbered as Rule 20-904 and as amended, eff. July 1, 2007.)

20-906 DESCRIPTION OF ASSETS

All petitions for distribution shall contain an allegation as to the character of the property, whether separate or community. The petition for distribution must describe in detail all property to be distributed, either in the body of the petition or in the prayer, or by a schedule incorporated in the petition for reference.

(Former Rule 909, rev. Dec. 1993. Renumbered as Rule 909, eff. July 1, 1998. Renumbered as Rule 20-906, eff. July 1, 2007.)

20-907 MANNER OF ASSET DISTRIBUTION

(a) Detail of proposed distribution shall be set forth in the body of the petition. Terms of the Will as to disposition of property and what is to be distributed under the laws of intestate succession shall be set forth.

(b) If there are unresolved issues regarding construction of the Will, heirship or succession, the petition should frame each of those issues for resolution by the Court.

(c) The decree of distribution, whether or not an accounting has been waived, must set forth specifically the manner in which the estate is distributed by showing the distributee's name, address and a description of the property or cash to be distributed. The order for distribution must be prepared so the Judge's signature is at the end. No exhibits or schedules shall follow the Judge's signature. In the event of the distribution of real property: (1) the property must be referenced by street address (if any), Assessors Parcel Number, and legal description; and (2) the address of the distributee must be set forth.

(d) If distribution may be made to the successor of an heir or beneficiary who died during administration, a Probate Code Section 13100 affidavit shall be filed in support of distribution to the successor. If the successor is the spouse of a deceased beneficiary under Probate Code Section 13500, the form of affidavit described in Section 13101 shall be used, except declarations (4) and (5) of part (a) of said section shall be replaced by the following declarations:

(4) "No proceeding is now being or has been conducted in California for administration of the decedent's estate. No election has been filed pursuant to Probate Code Section 13502 to have any of the described property administered as a portion of the decedent's estate."

(5) "No notice under Probate Code Section 13541 has been presented to the undersigned or recorded as of the date of this instrument." If real property is to be distributed to a spouse of a deceased beneficiary under Probate Code Section 13500 et seq., the decree shall direct the distribution in a manner indicating the names of both the deceased beneficiary and his or her claimant spouse such as the following: "to Jane Doe, surviving wife of John Doe, deceased, pursuant to Probate Code Section 13500, et seq."

(e) [Moved from subsection (b) of Local Rule 905 and amended.] All petitions for final distribution shall allege compliance with Probate Code section 9202 regarding notice to the Director of Health Services.

(Former Rule 910, rev. Dec. 1993. Renumbered as Rule 907 and amended eff. July 1, 1998. Renumbered as Rule 20-907 and as amended, eff. July 1, 2007.)

20-908 INVENTORIES AND ACCOUNTINGS (ESTATES & TRUSTS)

Copies of investment account statements verifying the balance of cash and/or securities on hand shall be attached to all inventories and accountings. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of statements. Substantial variation between the statement or verification and the balance reflected in the inventory or account shall be explained.

(Eff. January 1, 2000. Renumbered as Rule 20-908 and as amended, eff. July 1, 2007.)

20-909 COSTS GENERALLY NOT ALLOWED COUNSEL OR ADMINISTRATOR

Duplicating, telephone, fax and other costs in probate and trust estates. Ordinarily the Court will not allow reimbursement for costs of duplication of documents, telephone calls, postage, FAX (except court charges), parking fees or ordinary mileage incurred by the attorney, personal representative or trustee, as these are part of overhead, and should be absorbed in fees or commissions.

The personal representative shall not be reimbursed for mileage, parking fees or any other travel expenses incurred in connection with their appearance before the Court to qualify as the personal representative unless they have waived their statutory commission.

(Eff. July 1, 2003. As amended, eff. January 1, 2005. Renumbered as Rule 20-909 and as amended, eff. July 1, 2007.)

20-910 ESCROW CLOSING STATEMENTS

Copies of escrow closing statements must be filed with all accounts covering a period during which estate real property was sold.

(Eff. January 1, 2007. Renumbered as Rule 20-910, eff. July 1, 2007.)

PART TEN
DISPOSITION WITHOUT PROBATE AND
PETITIONS TO SET ASIDE SMALL ESTATES

PART ELEVEN
FAMILY PROTECTION

20-1101 HOMESTEADS

A petition for order setting apart probate homestead should contain the following information:

(a) The name and current residence address of the surviving spouse (if any) and of all surviving minor children.

(b) The date of birth of each surviving minor child.

(c) The dates of filing of all inventories, supplemental inventories, and amended inventories.

(d) As to the property on which the homestead is sought: Its legal description (or identifying data in the case of personal property); its common address (or location); the nature of the property (single family residence or other); whether it is community, quasi-community, or separate property of the decedent; whether any third party has an interest or claim thereto; whether it is specifically devised or bequeathed and, if so, to whom; its appraised value; the nature, amount, and basic details concerning all encumbrances; the period of time during which it has been (if it has) the principal residence of the person or persons on whose behalf the homestead is sought; any other facts which will assist the Court in determining that the property is the most appropriate to be set aside.

(e) The period of time for which the homestead is sought.

(f) The needs of the surviving spouse and minor children, including a statement of what other residential facilities, if any, are available to them; whether the surviving spouse has remarried; whether the minor children are in the care and custody of someone other than the surviving spouse.

(g) The needs of the heirs or devisees of decedent.

(h) The intent and estate plan of decedent, if any, and how such was manifested.

(i) An itemization of all creditor's claims by name of claimant and amount, as well as the status of each claim. If time for filing claims has not expired, there should be a similar itemization of all known or suspected debts or claims against decedent as to which claims have not yet been filed. The extent to which (1) liquid assets, and (2) other non-exempt assets are available to satisfy claims and specific cash bequests.

(Former Rule 1201, rev. Dec. 1993. Renumbered as Rule 1101, eff. July 1, 1998. Renumbered as Rule 20-1101, eff. July 1, 2007.)

20-1102 PETITION FOR FAMILY ALLOWANCE

(a) Necessary Allegations. All petitions for family allowance must state facts to show that the allowance prayed for is necessary and reasonable including:

(1) The solvency of the estate;

(2) Whether others are entitled to family allowance;

(3) Approximate needs of the applicant, with reference to his or her standard of living; and

(4) A general itemization statement of the applicant's property and income.

(b) Ex Parte Petitions Before Inventory.

(1) Petitions for family allowance presented ex parte and without notice granted before inventory will not be granted for a period in excess of six (6) months.

(2) If the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the personal representative must accompany the petition.

(c) Notice of Petition Before Inventory. The Court may grant the family allowance for longer than six (6) months before inventory on a noticed hearing.

(d) Petition After Inventory or Any Subsequent Petition. If application is made after the inventory has been filed, or is a second or subsequent petition, it should be noticed and placed on the calendar. Subsequent orders will be limited to a definite period.

(Former Rule 1202, rev. Dec. 1998. Renumbered as Rule 1102, eff. July 1, 1998. Renumbered as Rule 20-1102, eff. July 1, 2007.)

PART TWELVE
PETITIONS TO SET ASIDE SPOUSAL PROPERTY

20-1201 REQUIRED ALLEGATION IN SUPPORT OF CLAIMED PROPERTY AS PASSING OR BELONGING TO SURVIVING SPOUSE

If a community or quasi-community property claim is based on any document, a copy of the document showing signatures with the portions of it relevant to the claim shall be attached to the petition. If counsel reasonably believes that disclosure of the document would be detrimental to third parties, counsel may request the Court to place the document in a confidential folder.

(Former Rule 1301, rev. Dec. 1993. Renumbered as Rule 1201 and amended, eff, July 1, 1998. As amended eff. January 1, 2003. Renumbered as Rule 20-1201 and as amended, eff. July 1, 2007.)

PART THIRTEEN
GUARDIANSHIPS OF MINORS

20-1301 APPOINTMENT OF GUARDIAN OF MINOR

Probate Code Section 2106 provides that the Court in its discretion may issue letters of guardianship of the person or estate, or both, of more than one minor upon the same application. In proper cases the Court will appoint a guardian of the person or estate of more than one minor, but only if the minors so joined have a common parent.

(Former Rule 1401, rev. Dec. 1993. Renumbered as Rule 1301, eff. July 1, 1998. Renumbered as Rule 20-1301, eff. July 1, 2007.)

20-1302 SUPPORTING DOCUMENTATION

Petitions for appointment will be filed with all supporting documentation. When known, the full names, including middle names, of the petitioner(s), the minor(s), the mother and father must be set forth in all petitions for guardianship.

(Former Rule 1402, rev. Dec. 1993. Renumbered as Rule 1302, eff. July 1, 1998. As amended eff. January 1, 2003. Renumbered as Rule 20-1302, eff. July 1, 2007.)

20-1304 ORDER PRESCRIBING AND DISPENSING NOTICE RE APPOINTMENT GUARDIAN OF MINOR

Orders Prescribing Notice are not normally submitted to the Court. The Court will determine which persons must be given notice based upon the requirements of the Probate Code. Orders Dispensing Notice must be filed if the Petitioner seeks to dispense with notice to a known living person. Orders Dispensing Notice for deceased persons or for people who do not legally exist (such as a father and/or paternal grandparents when no father was listed on the minor's birth certificate) are not required.

(Former Rule 1404, rev. Dec. 1993. Renumbered as Rule 1304 and amended, eff. July 1, 1998. As amended, eff. July 1, 2006. Renumbered as Rule 20-1304, eff. July 1, 2007.)

20-1305 GUARDIANSHIP INVESTIGATIONS

(a) An unrelated guardian of the person of a minor will not be appointed until a written report has been filed by the appropriate investigator or officer pursuant to Probate Code Section 1513, unless the Court directs that such referral be dispensed with.

(b) The Court Investigator's Office shall not conduct investigations for petitions filed by relatives within the 2nd degree unless specifically ordered by the Court. Nevertheless, a Guardianship Questionnaire must be completed and filed and an additional copy of the Guardianship Questionnaire, Petition and Notice of Hearing given must be submitted, which the court clerk shall forward to the Court Investigator's Office upon appointment.

(Former Rule 1405, rev. Dec. 1993. Renumbered as Rule 1305, eff. July 1, 1998. Amended, eff. July 1, 2006. As amended, eff. January 1, 2007. Renumbered as Rule 20-1305, eff. July 1, 2007.)

20-1306 CONSULTATION WITH OTHER DEPARTMENTS RE HABEAS CORPUS OR CUSTODY PROCEEDINGS

Where a petition for guardianship of the person of a minor is pending, and where it appears to the Court that a custody proceeding or a writ of habeas corpus concerning the same minor is pending in any other department of the Superior Court, proceedings will be suspended until a consultation can be had between the Judge of the Probate Department and the Judge of the department in which such proceeding or writ is pending and a determination made as to whether or not such matter should be heard separately or a consolidation arranged.

(Former Rule 1408, rev. Dec. 1993. Renumbered as Rule 1306, eff. July 1, 1998. Renumbered as Rule 20-1306, eff. July 1, 2007.)

20-1307 GUARDIANS OF THE PERSON WHEN ADOPTION PROCEEDINGS ARE PENDING

A guardian of the person of a minor will not be appointed if it appears that adoption proceedings are pending unless a report is filed under authority of Section 1513 of the Probate Code by the appropriate officer or investigator with the State Department of Social Services authorizing the granting of said guardianship.

(Former Rule 1409, rev. Dec. 1993. Renumbered as Rule 1307, eff. July 1, 1998. Renumbered as Rule 20-1307, eff. July 1, 2007.)

20-1308 INCREASING AND DECREASING BOND OF GUARDIAN

When an increase in the guardian's bond is ordered, the Court favors the filing of an additional bond rather than filing of a substitute bond; and where a decrease in the liability of the guardian's bond is ordered the Court favors the use of an order decreasing liability under the existing bond rather than the filing of a substitute.

(Former Rule 1410, rev. Dec. 1993. Renumbered as Rule 1308, eff. July 1, 1998. Renumbered as Rule 20-1308, eff. July 1, 2007.)

20-1309 DUTIES OF GUARDIAN — LIABILITY OF PARENTS TO SUPPORT CHILD

As there is a statutory liability upon the parents to support their children when one or both parents are living, the Court will not permit guardianship funds to be used for the minor's benefit except upon a showing of the parents' financial inability to adequately support the minor or other circumstances which would justify the Court in departing from this rule in the best interest of the minor.

(Former Rule 1412, rev. Dec. 1993. Renumbered as Rule 1309 and amended, eff. July 1, 1998. Renumbered as Rule 20-1309, eff. July 1, 2007.)

20-1310 INVESTMENTS BY GUARDIANS

(a) The Court will not ordinarily approve the investment of the ward's funds in unsecured or secured loans to a near relative.

(b) Investment in real estate will not be approved unless supported by an appraisal by the probate Referee regularly appointed by the guardianship estate, and the guardian of the minor will not ordinarily be authorized to purchase real estate except for cash.

(Former Rule 1416, rev. Dec. 1993. Renumbered as Rule 1310 and amended, eff. July 1, 1998. Renumbered as Rule 20-1310, eff. July 1, 2007.)

20-1311 ACCOUNTS OF GUARDIANSHIP

(a) The verified account is to be filed 30 days prior to the date set by the Court for the review hearing. When a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth separately.

(b) When a copy of a final account and written notice of the hearing thereof is served upon the ward not less than fifteen (15) days prior to the hearing, or the ward's written approval is filed, no appearance by the ward may be necessary. However, the Court does not favor the waiver by the ward of the guardian's final account where the ward has reached majority and normally will not approve a report when the account is waived unless the ward is present in Court at the time of hearing.

(c) Where payment for guardianship services is requested to be allowed third persons acting on behalf of a guardian, those persons shall sign a verification stating that they performed the services on the dates specified and received payment in the amount, if any, set forth in the account. The verification shall be attached to the account for the period in which the services were rendered.

(d) Duplicating, telephone, fax and other costs in guardianship estates — Ordinarily the Court will not allow reimbursement for costs of duplication of documents, telephone calls, FAX (except court charges), parking fees incurred by the attorney or guardian or ordinary mileage incurred by the attorney or guardian, as these are a part of overhead, and should be absorbed in fees or commissions.

The guardian is not reimbursed for the expenses of his or her trip to qualify, unless the guardian is waiving his or her fee.

(e) Private professional or licensed guardians or conservators who provide bank or investment account statements pursuant to Probate Code section 2620(c) shall provide two sets of documents under separate cover. The first set shall be filed with the Court and shall include the account statements for the period preceding appointment (if a first accounting) and the periods for the start and end of the accounting period pursuant to Probate Code section 2620(c)(2). The second set shall be lodged with the Court separately and shall include the account statements for the rest of the accounting period pursuant to Probate Code section 2620(c)(3). The court shall retain all documents lodged pursuant to Probate Code section 2620(c)(3) until the court's determination of the accounting has become final, at which time the documents shall be returned to the person who lodged them or delivered to any successor appointed by the court.

(Former Rule 1417, rev. Dec. 1993. Renumbered as Rule 1311 and amended, eff. July 1, 1998. Amended, January 1, 2000. January 1, 2003, July 1, 2003, January 1, 2005 and July 1, 2006. As amended, eff. January 1, 2007. Renumbered as Rule 20-1311 and amended, eff. July 1, 2007. As amended, eff. July 1, 2008.)

20-1312 GUARDIANSHIP INVENTORY AND APPRAISAL

Copies of investment account statements verifying the balance of cash and/or securities on hand must be attached to all Inventories and Appraisals. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of the statements. Substantial variation between the statement or verification and the balance reflected in the inventory must be explained or reconciled.

(Eff. July 1, 2008.)

20-1315 GUIDELINES FOR APPOINTMENT OF COUNSEL IN GUARDIANSHIPS OF MINORS

In appointing counsel for a child in a guardianship, the court shall adhere to the requirements of the Local Rules of the Superior Court of California, County of San Bernardino County, (Family Law Rules), Chapter 15, Rule 1513.

(Eff., July 1, 2003. As amended, eff. July 1, 2006. Renumbered as Rule 20-1315, eff. July 1, 2007.)

20-1317 NOTICE TO INCARCERATED PERSONS

Pursuant to Probate Code section 1460(e), when a person who is to receive personal notice of a guardianship proceeding is incarcerated in a jail or prison at the time of the filing of the Petition for Guardianship, the Court may find that service upon the incarcerated person by certified mail is legally sufficient. Such a request for alternative service shall be accompanied by a declaration explaining why it would be a hardship for the petitioner to personally serve the incarcerated person.

(Eff., January 1, 2007.) Renumbered as Rule 20-1317, eff. July 1, 2007.)

PART FOURTEEN
PROBATE CONSERVATORSHIPS

20-1400 PETITIONS

The original and one extra copy for the Court Investigator of the petition, proposed order and all supporting documents shall be submitted.

(Eff. July 1, 1998. Renumbered as Rule 20-1400, eff. July 1, 2007.)

20-1401 APPOINTMENT OF COURT INVESTIGATOR

(a) Unless the proposed conservatee is the petitioner or has signed a nomination of the conservator and both the proposed conservator and proposed conservatee will attend the hearing, the Court Investigator will conduct an investigation. To obtain the investigation, the following forms must also be prepared and filed with the petition: A declaration signed by a licensed medical or accredited practitioner; an Order Appointing Court Investigator; and a Probate Investigator's referral form. If the proposed conservatee is able but unwilling to attend the hearing, the medical declaration need not be filed.

(b) The Court Investigator's Office will not conduct a review until the Appointment Order is signed.

(c) The hearing will be set at least four (4) weeks from the date of filing.

(Former Rule 1501, rev. Dec. 1993. Renumbered as Rule 1401 and amended, eff. July 1, 1998. Renumbered as Rule 20-1401, eff. July 1, 2007.)

20-1402 ATTORNEYS FOR CONSERVATEES

The representation of a conservatee by an attorney appointed by the Court, ceases upon the hearing for which he or she was appointed, unless otherwise ordered by the Court.

(Former Rule 1502, rev. Dec. 1993. Renumbered as Rule 1402, eff. July 1, 1998. Renumbered as Rule 20-1402 and as amended, eff. July 1, 2007.)

20-1403 RESPONSIBILITIES OF THE CONSERVATOR

(a) The conservator of an estate must maintain all of the conservatee's liquid assets in the name of the conservatorship.

(b) A conservatee is not permitted to manage his estate without Court approval, except as to a reasonable allowance under Probate Code Section 2421 or as to earnings under Probate Code Section 2601. Allowances of not more than $100.00 per month will be approved under Section 2403, without prior Court authorization. All other allowances should be presented to the Court for

prior authorization under Section 2421.

(Former Rule 1504, rev. Dec. 1993. Renumbered as Rule 1403 and amended, eff. July 1, 1998. Renumbered as Rule 20-1403, eff. July 1, 2007.)

20-1404 INVENTORY AND APPRAISAL

(a) A proof of service indicating compliance with the service requirements of Probate Code section 2610(a) must be attached to a filed Inventory and Appraisal.

(b) A successor conservator shall not be required to file an Inventory and Appraisal for assets received from the prior Conservator, but instead shall sign and file a receipt for such assets. The assets listed on the receipt so filed shall constitute the beginning balance for purposes of accounting by the successor conservator. A conformed copy of the receipt shall be provided to the prior conservator.

(c) Copies of investment account statements verifying the balance of cash and/or securities on hand must be attached to all Inventories and Appraisals. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of the statements. Substantial variation between the statement or verification and the balance reflected in the inventory must be explained or reconciled.

(Former Rule 1505, rev. Dec. 1993. Renumbered as Rule 1404, eff. July 1, 1998. Amended, eff. July 1, 2006 and January 1, 2007. Renumbered as Rule 20-1404 and amended, eff. July 1, 2007. As amended, eff. July 1, 2008.)

20-1405 SUBSTITUTED JUDGMENT—CREATION OF TRUSTS

Creation of trusts of the property of a conservatee (Probate Code § 2580(b)(5)) will normally be approved only on the conditions that (1) the trustee be subject to the same obligations, terms and conditions as a conservator of the estate during the lifetime of the conservatee and (2) the trust instrument so obligate the trustee. These obligations, terms and conditions shall normally include, but need not be limited to, the following:

1. Posting bond for assets and income of the trust;

2. Accounting to the Court in the Conservatorship proceeding;

3. Conservatorship investment limitations;

4. Court approval and confirmation of gifts, hypothecations or sales of assets;

5. Providing for the conservatee's needs without regard for the interest of remainder beneficiaries;

6. Prior Court approval for payment of fees to attorneys, conservators and trustees; and

7. Payment of Court investigator fees.

(Eff. July 1, 1998. Renumbered as Rule 20-1405, eff. July 1, 2007.)

20-1406 ACCOUNTINGS

(a) If the conservatorship also involves the person of the conservatee, the accounting petitions shall state the conservatee's residences during the accounting period.

(b) Requests to waive interim accountings under Probate Code section 2628 may be made on an ex parte basis. All final accountings, including estates qualifying under section 2628, shall be set for hearing. In all cases in which the conservator seeks an order dispensing with a formal accounting pursuant to section 2628, the beginning and ending dates of the accounting period sought to be waived must be specified. An order dispensing with the filing of a formal accounting does not relieve the conservator from the duty of filing subsequent 2628 petitions or, where the estate no longer qualifies, a formal accounting pursuant to section 2620. If, after payment of Court-approved conservator's and attorneys' fees, it appears to the satisfaction of the Court that the estate will continue indefinitely to meet the requirement of section 2628, the Court may dispense with future accountings.

(c) Where payment for conservatorship services is requested to be allowed third persons acting on behalf of a conservator, those persons shall sign a verification stating that they performed the services on the dates specified and received payment in the amount set forth in the account. The verification shall be attached to the account for the period in which the services were rendered.

(d) Duplicating, telephone, fax and other costs in conservatorship estates—Ordinarily the Court will not allow reimbursement for costs of duplication of documents, (telephone calls, postage, FAX (except court charges), parking fees or ordinary mileage incurred by the attorney or Conservator, as these are part of overhead, and should be absorbed in fees or commissions. The Conservator is not reimbursed for the expenses of his or her trip to qualify, unless the Conservator is waiving his or her fee.

(e) A copy of any petition (except ex parte petitions for waiver of accounting pursuant to Probate Code section 2628) regarding an interim or final accounting and the notice of hearing on the petition must be served by mail 15 days prior to the hearing upon the conservatee, any spouse or domestic partner of the conservatee, anyone who has requested special notice, and any attorney who has represented the conservatee in the conservatorship matter unless that attorney has been dismissed from the case. Proof of service stating compliance with this Local Rule must be filed with the petition regarding an accounting.

(f) Private professionals or licensed guardians or conservators who provide bank or investment account statements pursuant to Probate Code section 2620(c) shall provide two sets of documents under separate cover. The first set shall be filed and shall include the account statements for the period preceding appointment (if a first accounting) and the periods for the start and end of the accounting period pursuant to Probate Code section 2620(c)(2). The second set shall be lodged separately and shall include the account statements for the rest of the accounting period pursuant to Probate Code section 2620(c)(3). The court shall retain all documents lodged pursuant to Probate Code section 2620(c)(3) until the court's determination of the accounting has become final, at which time the documents shall be returned to the person who lodged them or delivered to any successor appointed by the court.

(Former Rule 1507, rev. Dec. 1993. Renumbered as Rule 1406 and amended, July 1, 1998. Amended January 1, 2000, July 1, 2003, January 1, 2005 July 1, 2005 and July 1, 2006. Renumbered as Rule 20-1406 and as amended, eff. July 1, 2007. Amended, eff. July 1, 2008.)

20-1407 COURT INVESTIGATOR REVIEW/FEES

(a) The Court Investigator shall review all conservatorships subject to Section 1850 of the Probate Code. This review shall include a personal interview with the conservator of the estate to examine conservatorship records and assets.

(b) The Court shall annually assess the estate for each review conducted by the Court Investigator.

(c) Court Investigator fees for reviews are to be paid at the time the next accounting is filed.

(d) Payment of said assessment is to be made at the Clerk's office in the appropriate District. Upon payment of said assessment the clerk will forward to the Court a copy of their form indicating that payment has been made.

(e) No assessment is to be made in cases that are conservatorship of the person only.

(Former Rule 1509, rev. Dec. 1993. Renumbered as Rule 1407 and amended, eff. July 1, 1998. As amended eff. January 1, 2003. Renumbered as Rule 20-1407, eff. July 1, 2007.)

20-1408 CHANGE OF RESIDENCE OF THE CONSERVATEE

All notices of change of residence pursuant to Probate Code section 2352(e)(1) and 2352(e)(3) must be served upon the Court Investigator. Such notices must include the new telephone number for the conservatee.

(Former Rule 1511, rev. Dec. 1993. Renumbered as Rule 1408 and amended, eff. July 1, 1998. Renumbered as Rule 20-1408 and as amended, eff. July 1, 2007.)

20-1409 INDEPENDENT POWERS

In order to obtain the independent powers set forth in Probate Code Section 2591, specific facts justifying each independent power requested must be alleged. These powers will only be granted upon a showing of specific need. Independent powers are not available to temporary conservators unless granted after a noticed hearing.

(Former Rule 1512, rev. Dec. 1993. Renumbered as Rule 1409 and amended, eff. July 1, 1998. Renumbered as Rule 20-1409, eff. July 1, 2007.)

20-1410 TERMINATION

(a) Where a Petition for Termination is filed alleging the conservatorship is no longer required, the petition will ordinarily not be granted unless the conservatee personally appears in Court.

(b) As promptly as possible after the death of a conservatee (within 120 days, unless good cause for delay is shown), the conservator of the estate shall file a Petition for Discharge and a Final Accounting.

(c) Court Investigator fees are to be paid at the time the Petition for Termination is filed, or such Petition shall set forth the reasons for no doing so.

(d) No Order of Discharge shall be issued until proof of payment of all Court Investigator fees is received by the Court.

(Former Rule 1513, rev. Dec. 1993. Renumbered as Rule 1410 and amended, eff. July 1, 1998. Renumbered as Rule 20-1410, eff. July 1, 2007.)

20-1411 CHANGE OF VENUE

Upon transfer of a conservatorship to San Bernardino County notice shall be given to the Court Investigator's office.

(Former Rule 1515, rev. Dec. 1993. Renumbered as Rule 1411, eff. July 1, 1998. Renumbered as Rule 20-1411, eff. July 1, 2007.)

20-1413 CONFIDENTIAL INCOME TAX RETURNS

(a) Conservators of the estate shall furnish the court with a copy of the last federal income tax return filed by the conservatee prior to commencement of the conservatorship. The copy of the return shall be marked, "Confidential," and shall be filed in the Confidential File no later than the hearing date for review of filing of the Inventory and Appraisement. If the return is not filed by the review date, a verified declaration shall be filed setting forth the reason therefore and the date when the return can reasonably be expected to be filed.

(b) The last federal income tax return filed in the Confidential File pursuant to this part is not open to inspection by any person other than the parties to the proceeding and their attorneys and the probate department, except upon the written authority of the judge of the superior court. A judge of the superior court may not authorize anyone to inspect the last federal income tax return except in exceptional circumstances and for good cause.

(Eff. January 1, 2000. Renumbered as Rule 20-1413, eff. July 1, 2007.)

20-1414 CONSERVATOR ORIENTATION CLASS

(a) Each proposed non-professional conservator must attend a conservator orientation class conducted by the Court prior to the hearing on the petition for their appointment as conservator.

(b) Proposed non-professional conservators who live outside San Bernardino County and cannot travel to attend a conservator orientation class must contact the Court and make alternate arrangements for training.

(c) Proof of compliance with this rule must be filed with the Court before or at the time of the hearing on the petition.

(d) Temporary conservators are exempt from attending an orientation class unless the Court orders otherwise, but may voluntarily attend the orientation class. The Public Guardian, the Inland Regional Center, and corporate fiduciaries, banks and other entities authorized by law to conduct the business of a trust company are also exempt from this rule.

(e) LPS conservators are required to attend the orientation only once, prior to the hearing for approval of their initial appointment.

(Eff. July 1, 2009.)

PART FIFTEEN
TRUSTS

20-1502 REQUIRED SUBMISSION OF TRUST INSTRUMENT

A copy of the entire subject trust instrument(s), including all amendments thereto and all attachments, schedules, and exhibits to the instrument(s), must be submitted with any petition based upon a trust filed with the Court.

(Eff. July 1, 2006. Renumbered as Rule 20-1502, eff. July 1, 2007. Amended, eff. July 1, 2008. As amended, eff. July 1, 2009.)

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San Diego County Probate Rules

Effective January 1, 2010

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CHAPTER 1
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4.1.1 Address, Phone and Hours for Probate Examining Division

A. The addresses, phone numbers and hours for the Probate Divisions can be found at the court's website, www.sdcourt.ca.gov.

B. In these rules, the Central Division and the North County Division will sometimes be referred to as "The Probate Court."

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

4.1.2 Filing Locations

A. Probate matters may be filed in one of the two Probate Divisions, i.e. the Central division and the North County (Vista) division.

B. Original petitions should be filed in the appropriate division.

C. The appropriate division is determined by the zip code for the person or property upon which venue is based pursuant to the Probate Code. A listing of zip codes and the corresponding division can be found in the Probate section of the court's website at www.sdcourt.ca.gov.

D. Petitions that are not filed in the correct division will be transferred to the correct division upon motion of a party or upon the court's own motion.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev 1/1/2010)

4.1.3 (Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Del. 1/1/2010)

4.1.3 Court Appointment: Proof of Insurance

In addition to submitting the appropriate Judicial Council form(s), attorneys seeking initial appointment or reappointment as Court-Appointed Attorneys in Probate Conservatorships and Guardianships must submit a report of insurance setting forth the amount of the insurance coverage and its effective dates.

(Adopted 1/1/2010)

CHAPTER 2
PLEADINGS: FORM AND FILING; SANCTIONS

4.2.1 Backing on Papers Filed

All wills and other testamentary documents submitted for filing must be attached to a stiff backing cover, the right side margin of which contains the document's caption (title) which must be fully visible.

(Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

4.2.2 Consolidation with the Lowest Number and Notice of Related Case/Petition

A. Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

C. California Rules of Court, rule 3.300, respecting the requirements for Notice of Related Case, applies to all petitions or applications filed with the Probate Divisions of the Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2009)

4.2.3 Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the

reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

(Adopted 1/1/2006; Renum. 1/1/2007)

CHAPTER 3
PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

4.3.1 Caption of Petitions

A. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

B. A "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated directly below the case number in the caption of all subsequently filed pleadings related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

4.3.2 Filing Documents for Calendared Matters

A. The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

B. Petitions, Applications, and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 4:30 p.m. three court days prior to the hearing. Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

C. Form and Lodging of Exhibits. The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with F. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

D. Accounting Format. Accounting schedules must be filed with the court and not lodged or attached as exhibits.

E. Lodged Documents. Lodged material must be accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip.

F. Lodgments. A Notice of Lodgment listing all of the items lodged must be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court must also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired.

G. Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rules of Court, rule 2.304, is not available.

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

4.3.3 Use of Judicial Council Forms

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

C. Counsel are cautioned that printed forms prepared by banks or others may not be acceptable for filing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

4.3.4 AFFIDAVITS AND DECLARATIONS UNDER PENALTY OF PERJURY

A. A declaration must meet all of the requirements of Code of Civil Procedure, section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

"I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date].

_____

[signature of fiduciary]

_____

[name of fiduciary]"

B. If such declaration is executed within California, it may take either the above form or the following form:

"I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

_____

[signature of fiduciary]

_____

[name of fiduciary]"

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

"I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe it to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

_____

[signature of officer]

_____

[name of officer]"

(Eff. 1/1/90; Renumbered 7/1/2003; Renumbered 1/1/2006)

4.3.5 Complete Address in Petition or Report

Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.3.6 Multiple Minors and Conservatees

A. Where several minors share the same parent, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if the assets of the estate are community property. In all other cases, the conserved husband and wife must have

separate case numbers.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

CHAPTER 4
SETTINGS, ASSIGNMENTS AND CONTINUANCES

4.4.1 Calendar Settings of Probate Matters

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

B. Any request for early setting must be approved by the Probate Examining Department and will be granted only for good cause.

C. Calendar times may be obtained from the court's website at www.sdcourt.ca.gov or by calling the Business Office at each location.

D. Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

E. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with a completed "Duties and Liabilities" form, signed by proposed fiduciary.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

4.4.2 Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.4.3 Continuances of Hearings on Petitions

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuances may not be granted on the date of the hearing, unless requested and granted through Telecourt as stated at Rule 4.6.2 or by the court when the matter is called for hearing.

B. A one-week continuance will only be granted for good cause.

C. A first and second continuance of two weeks or more may be obtained by contacting the Probate Examiner.

After two continuances have been granted, further continuances must be approved by the court.

D. Continuance policy is subject to change.

E. A preapproved matter will be continued if an objection is made at time of hearing and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. Probate examiners have authority to continue the hearing date on non-contested petitions. For non-contested matters, counsel seeking a continuance must inform all counsel and any parties who may appear of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

G. For contested matters, counsel seeking the continuance must obtain the advance agreement of all parties who have appeared in the matter prior to making a continuance request.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev & Renum. 1/1/2010)

4.4.4 Setting Matters Already on File

A. When a petition is on file but not set for hearing, it will be set by the probate examiner upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

B. If the matter was previously set and taken off calendar because of defects or nonappearance, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.4.5 Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances for a hearing listed in the rule. A party that intends to appear telephonically must provide notice as specified in the California Rules of Court, rule 3.670(g). The party must also arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).

(Adopted 1/1/2009; Rev. 1/1/2010)

CHAPTER 5
NOTICES

4.5.1 ADDITIONAL NOTICE REQUIREMENTS

A. Under the provisions of the Probate Code, the court may require additional notice in any matter.

B. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.

C. The court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

D. The probate calendar clerk will prepare and post the notice as required pursuant to Probate Code section 10308(c). The clerk is not responsible for publications or mailings.

E. Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.

F. 30 days "Notice of Hearing" to the Department of Health Services is required on petitions requesting approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

4.5.2 Proof of Service

A. It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code section 1260 and Code of Civil Procedure section 1013, subdivision (a), the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.

B. Where notice must be served other than by regular mail, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. Any counsel seeking to be relieved as counsel of record for a fiduciary or a person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.5.3 Notice Re Letters of Special Administration

A petition for letters of special administration will not be granted without notice to the surviving spouse, the person nominated as

executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010)

4.5.4 NOTICE TO PERSONS REQUESTING SPECIAL NOTICE

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested. (Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.5.5 NOTICES TO TRUST BENEFICIARIES

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 6
CALENDAR NOTES AND HEARINGS

4.6.1 Availability of Probate Examiner's Notes and Clearing of Defects

A. Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

B. The notes are available on the San Diego Superior Court website, www.sdcourt.ca.gov.

When the examiner receives additional pleadings and updates the notes, the new notes will ordinarily be posted to the website by opening of business the following day.

C. Persons who do not have access to the internet may request that the notes be mailed by attaching a "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel and self-represented parties are encouraged to contact Probate Examining with any questions counsel may have or explanations that may assist in the clearing of the defects. Counsel may also appear in person to confer with Probate Examining to clear defects. All such calls or meetings must be during the open hours of Probate Examining.

E. An appearance is required on all matters not preapproved even though there are no defects.

F. To correct defects counsel are required, at least three court days in advance of the hearing date, and no later than 4:30 p.m. to supply to the probate examiner's office any additional documents or explanations necessary for approval of the petition without continuance. Any documents submitted late may not be examined before the hearing, and a continuance may be required. See Rule 4.3.2.

G. Supplements which cure defects do not require additional notice. Amendments and Amendments to pleadings require additional notice. See California Rules of Court, rule 7.53.

H. Amended petitions supersede any prior petitions and will be set for hearing in due course.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010)

4.6.2 Telecourt

If an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such date, time and telephone number as designated by the probate judge and posted on the court's website, www.sdcourt.ca.gov, to seek pre-approval or a continuance. Counsel must be on the phone line when the call is answered.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 7
ORDERS AND BONDS

4.7.1 Preparation of Orders

A. An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge, unless counsel is otherwise directed by the court.

B. Counsel for the prevailing party must, unless the court orders otherwise, prepare and submit a formal order. Orders must be submitted in accordance with the procedure set forth in California Rules of Court, rule 3.1312.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.7.2 Material to be Included in Probate Orders

A. All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

B. Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

C. In no case may any material appear after the signature of the judge.

D. At least two lines of text must be included on the page containing the judge's signature.

E. While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

F. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

G. All orders for distribution must contain the following:

1. A list of the assets on hand;

2. The beneficiaries under the will or, in the event of intestacy, the heirs at law and their specific relationship to the decedent. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest must be fully set forth.

3. The person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

4. A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

5. A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

6. The fees and commissions allowed by the court.

7. The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution"

H. The court will not hear any subsequently filed petition covering the same subject matter of a previous petition where the order previously made has not been submitted and approved pursuant to the requirements of these rules.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

4.7.3 Riders and Exhibits

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.7.4 Orders for Continuing Payment Must Have a Maximum Time Limit

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.7.5 Application for Ex Parte Orders - Generally

A. All ex parte applications must comply with rule 3.1200 et seq. of the California Rules of Court.

B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge.

C. All papers presented for ex parte consideration must be presented with an appropriate Ex Parte Cover Sheet. Coversheets are available at the Probate Business Office or on the court's website. The court encourages filers to present coversheets on green paper.

D. Any request must be accompanied by an Ex Parte Cover Sheet, an application, supporting declaration and a separate order setting forth the specific relief sought in the application. Points and authorities may be filed to support the application.

E. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.

F. Contested applications and applications regarding discovery motions in accordance with departmental rules require an appearance. Uncontested applications (dropped) and applications not regarding discovery motions do not require an appearance. All Ex Parte matters require notice pursuant to the Rules of Court. When an appearance is required, a written declaration of notice or of the reason it was not given as required by California Rules of Court, rules 3.1202(a) and (e) must be filed no later than 3:00 p.m. on the day preceding the hearing. The court may take the ex parte matter off calendar for failure to file the notice declaration.

G. Fee waiver applications that require judicial approval must be submitted as an ex parte application.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.7.6 Matters Which May be Heard Ex Parte

Matters which may be heard ex parte include the following:

A. Sale of securities;

B. Sale of depreciating assets;

C. Family allowance (First application before Inventory);

D. Guardianship and conservatorship investments;

E. Appointment of special administrator;

F. Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary, see Local Rules 4.18.2 and 4.19.1 for further requirements;

G. Increase in bond;

H. Amendment of title of proceedings;

I. Authorization to enter into exclusive listing agreement for sale of real property;

J. Preliminary distribution of estate pursuant to Probate Code section 11623 on proof that Inventory and Appraisal has been filed;

K. Authorization to invest in units of a common trust fund;

L. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances; and,

M. Appointment of a guardian ad litem.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

4.7.7 Communications with the Court

Documents presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are subject to California Rules of Court, rule 7.10(c). (See Code of Judicial Ethics.)

(Adopted 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.7.8 Nunc Pro Tunc Orders Correcting Clerical Errors

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order.

B. The order must not take the form of an amended order. Local Forms SDSC PR-137, Declaration to Correct Nunc Pro Tunc, and SDSC PR-138, Nunc Pro Tunc Order, are available on the court's website and may be used. If declaration and order are submitted on pleading, the pleading must substantially set forth the language used in the local forms.

C. The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure.

E. The date of the order must be left blank for the court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order]."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.7.9 Reserved for Future Use

4.7.10 Bonds; Additional Bond

A. In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

B. Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

4.7.11 Deposited Funds

A. Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.

B. Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within 15 court days following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When there is good cause for failure to comply with paragraph D, a party may present an ex parte petition to extend the time to return the receipt.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 8
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.8.1 Letters Issued in Decedent's Estates

A. Letters issued in a decedent's estate will expire 12 months after the date the underlying petition is approved.

B. After the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 13 months after the date the underlying petition is approved.

C. At the time of the review hearing, if the estate has been closed or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and may be required to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure sections 177.5 and/or 575.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.

D. Counsel shall file declarations at the time of Final Distribution, or at any hearing on an allowance for compensation, explaining why failure to comply with Probate Code section 12200 was beyond the control of the party seeking compensation or was in the best interest of the estate.

E. In estates for which a federal tax return is required the personal representative may file an ex parte request to extend letters of administration for an additional six months and to set the review hearing 18 months from the date at which the petition for administration was approved. The request for extension must be accompanied by a verified statement by the personal representative that a federal tax return is required for the estate. (See Prob. Code, § 12200, subd. (b).) If the estate has not been closed or a Probate Code section 12200 Report filed within 18 months, the petitioner will be ordered to file a Status Report and may be required to show cause in accordance with paragraphs C and D above.

(Adopted 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

4.8.2 Allegations in Petitions Re: Beneficiaries

In all petitions pertaining to the administrative duties of a fiduciary:

A. The nominated trustee of a trust created by a will must be included in the list of beneficiaries and identified as the trustee on that list. (See also Rule 4.5.5.)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil.

D. The street address and relationship of the proposed personal representative to the decedent must appear in the petition.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006)

4.8.3 Notice to Foreign Consul

A. When notice is required to be given to foreign consul, the identity of the proper consul must be set forth in Petition for

Probate.

B. If a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

C. Notices pursuant to this rule will be required only for an original petition for probate. This notice is in addition to that given to heirs and devisees under Section 8110 and 15-day notice is required.

D. Information as to whether a country has recognized diplomatic or consular representation in the United States may be obtained from the United States Department of State.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

4.8.4 Reserved for Future Use

(Del. 1/1/2009)

4.8.5 Multiple Testamentary Instruments—Proof

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code sections 8220-8223. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument need not be proven independently of the subsequent instrument.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.8.6 Will With Deletions or Interlineations

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

"Proof of Holographic Instrument," Judicial Council form DF-135, is required whenever the petitioner alleges that the deletion or interlineation is in the handwriting of the testator and should be admitted. (Prob. Code §§ 8221, 8222.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.8.7 Bonding of Personal Representatives

A. When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be $20,000.

B. Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

C. Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

D. Non-resident personal representatives are subject to no less than the minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.8.8 Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the

efforts to obtain consent and the results of those efforts.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

4.8.9 Continuance to Permit Filing of Contest

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

4.8.10 Multiple Representatives

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.8.11 Statement of Address of Nonresident Personal Representative

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to Probate Code section 8573.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 9
SUMMARY PROCEEDINGS

4.9.1 Petition to Set Aside Small Estate

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing at the same time.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.9.2 Spousal Property Petition

A. If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information should be included in the spousal property petition:

1. Date and place of marriage;

2. Ownership of any real and personal property on date of marriage and a description and approximation of values;

3. Decedent's net worth at time of marriage;

4. Decedent's occupation at time of marriage;

5. A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;

6. The identification of any property described in 2 or 5 above which is still a part of this estate;

7. A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and

8. Any additional facts upon which the claim that property is community or quasi-community property is based.

B. If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

4.9.3 PROCEEDINGS TO ESTABLISH FACT OF DEATH

A. A petition to establish the fact of death (under Probate Code section 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

B. There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

C. A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

D. A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

E. In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

F. A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in (A), above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

G. The court may make an order on the petition filed under (F) determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar.

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 10340 are set in the same manner as (F).

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 10
INDEPENDENT ADMINISTRATION

4.10.1 INDEPENDENT ADMINISTRATION

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Probate Code section 10400), a Notice of Proposed Action will be required for the sale of a mobile home value at or above $50,000.

(Adopted 1/1/1990; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 11
MISCELLANEOUS PETITIONS

4.11.1 PETITION FOR INSTRUCTIONS

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

B. Petitions for Instructions may not be used to determine the manner in which a probate estate should be distributed. A direction of the court regarding distribution of a probate estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006; Revised 1/1/2008)

4.11.2 PETITION TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY (PROBATE CODE SECTIONS 850)

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least 40 days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

4.11.3 PETITION TO DETERMINE PERSONS ENTITLED TO DISTRIBUTION (PROBATE CODE SECTIONS 11700-11705)

A. Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Probate Code section 56.)

B. A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

C. When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

4.11.4 PETITION FOR FAMILY ALLOWANCE (PROBATE CODE SECTIONS 6540-6545)

A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.

B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.

C. The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first."

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.11.5 PETITION FOR AUTHORITY TO OPERATE A BUSINESS, (PROBATE CODE SECTION 9760)

A. The court may direct that at least 15 days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

B. The court may prescribe any reasonable notice. A separate order prescribing notice must be obtained ex parte before the petition is filed.

(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.11.6 PETITION FOR AUTHORITY TO BORROW (PROBATE CODE SECTIONS 9800-9807)

A. Petitions for authority to borrow money must set forth the amount of the bond in force and the amount of the loan proceeds. If no additional bond is required, or if bond is waived, that fact must be alleged.

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.11.7 PETITION FOR AUTHORITY TO RETAIN AN ATTORNEY

A. A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

B. If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount including the necessity for further funds, the amount spent to date, and for what services.

C. The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See Whittlesey v. Aiello (2002) 104 Cal.App.4th 1221 and Terry v. Conlan (2005) 131 Cal.App.4th 1445.

(Adopted eff. 7/1/2002; Renumbered 1/1/2006; Revised effective 1/1/2007)

4.11.8 JOINDER IN PLEADINGS

A. Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined Pleading") by filing and serving a verified "Joinder in Pleading" prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

B. The filing of a Joinder in Pleading indicates the endorsing party's adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party must give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such Joinder in Pleading may move, demur, or otherwise plead to the Joinder in Pleading in the same manner as to an original pleading.

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading. If it is the endorsing party's first appearance in the action, the endorsing party must pay the appropriate first appearance fee upon filing the Joinder in Pleading.

(Effective 1/1/2006)

4.11.9 SUBSTITUTED JUDGMENT AND COMMUNITY PROPERTY TRANSACTIONS

Absent good cause, an attorney, or a guardian ad litem, must be appointed for the Conservatee or incapacitated spouse in all proceedings pursuant to Probate Code §2580, et seq., and §3100, et seq. The attorney, or guardian ad litem, shall include in their report to the court recommendations, if appropriate, relative to the ultimate testamentary disposition of the involved assets.

(Effective 1/1/2007)

4.11.10 Petition for Transfer

All orders transferring a probate matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008)

CHAPTER 12
CREDITOR'S CLAIMS

4.12.1 NOTICE TO CREDITORS

A. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See Rule 4.15.4.)

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

4.12.2 FILING CREDITORS' CLAIMS

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Probate Code section 9250.)

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.12.3 Creditors' Claims of Personal Representatives or Counsel

A. The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

B. A proposed allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

4.12.4 PAYMENT OF CLAIMS AND DEBTS

A. Other than those creditors' claims ordered paid by the court, the personal representative may defer payment of claims until settlement of an account.

B. The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section. Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.

(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Renumbered 1/1/2006)

4.12.5 SPECIAL CREDITORS' CLAIMS

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing 60 days after the date of death.

B. Public entities' creditor's claims are governed by Probate Code section 9200, et seq., and may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 13
SALES

4.13.1 PUBLICATION OF NOTICE OF SALE OF REAL PROPERTY

A. Unless one of the exceptions mentioned in Probate Code section 10301-10303 applies, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

B. The notice of sale of real property must set forth the street address or other common designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot

announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted eff. 1/1/90; Amended eff. 7/1/95; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

4.13.2 VESTING OF TITLE TO PROPERTY

4.13.2 Vesting of Title to Property

A. The court will not confirm a sale to a "nominee" or "assignee", only to the actual buyer.

B. In a conservatorship or guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code sections 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code sections 2359 and 2403.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

4.13.3 Bond on Sale of Real Property

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

C. In a conservatorship or guardianship, a Recovery bond must be included in the total bond as required by Probate Code section 2320 and California Rules of Court, rule 7.207.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

4.13.4 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.5 COMMISSIONS ON SALE OF REAL PROPERTY

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may not allow a commission in excess of five percent (5%) on improved property or ten percent (10%) on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has any interest in, the purchaser. (See Prob Code §10160.5.)

(Adopted 1/1/90; Rev. 1/1/91; Rev. 7/1/95; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006; Revised 1/1/2007)

4.13.6 SALE OF REAL PROPERTY WHEN BUYER ASSUMES ENCUMBRANCE: NECESSITY FOR MINIMUM DEPOSIT

A. A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

B. The court requires a 10 percent deposit be made prior to confirmation on any sale of real property.

(Adopted 1/1/90; Amended 1/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.7 SALE OF SPECIFICALLY DEVISED PROPERTY

A. The sale may not be approved without the specific beneficiary's consent unless the court finds good cause for approval without the consent.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered and revised 1/1/2006)

4.13.8 PERSONAL PROPERTY MUST BE APPRAISED BEFORE SALE

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.9 SALES OF MOBILE HOMES

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.10 SALES OF SECURITIES

A. Commonly traded securities need not be appraised before the sale may be authorized.

B. In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

C. In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

D. Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

E. If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

F. The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.11 OVERBIDS

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.13.12 INCREASED BID FORMS

When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" SUPCT. form PR-65(10-91) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.

(Form Deleted eff. 7/1/95; Renumbered & Rev. 7/1/2001; Renumbered and revised 1/1/2006)

4.13.13 ALLOWANCE OF COMMISSIONS UPON OVERBID

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 14
INVENTORY AND APPRAISAL

4.14.1 Preparation of Inventory and Appraisal

A. With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

B. An Inventory of real property must include the following information:

1. Complete legal description;

2. Common address;

3. Assessor's Parcel Number;

4. Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

C. The Inventory must not include any asset which is not an asset of the estate, such as:

1. Insurance proceeds payable to named beneficiaries.

2. Individual retirement accounts payable to named beneficiaries.

3. Trust assets which pass by trust terms, including Totten Trusts.

4. Assets held in joint tenancy.

D. Petitioner shall characterize each item of property listed in the Inventory and Appraisal pursuant to Probate Code § 8850.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2010)

4.14.2 CORRECTING INVENTORY AND APPRAISAL

A. If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

B. If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

C. If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

D. If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

E. Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

Item No.	Description	Appraised Value
4.	Item 4 was previously described as: 400 shares XYZ common stock Item 4 is correctly described as: 300 shares XYZ common stock	
	Previously appraised value:	$4,000.00
	Correct appraised value:	$3,000.00
	Change in appraised value:	($1,000.00)

(Adopted 1/1/90; Amended 7/1/96; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

4.14.3 PETITION FOR WAIVER OF APPRAISAL BY REFEREE

When no referee has been designated for the case, 15 days notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.

(Adopted 7/1/96; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

CHAPTER 15
ACCOUNTS AND REPORTS

4.15.1 REQUIRED FORM OF ACCOUNTS

A. Accounting values of assets must not be changed to reflect fair market value, but fair market value may be set forth separately in the report or account

B. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006; Revised 1/1/2008)

4.15.2 BANK LETTERS AND STATEMENTS

A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

B. The appropriate balance must be clearly highlighted or otherwise marked.

C. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

D. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements." Bank or financial statements substantiating accountings by a private professional or licensed guardian or conservator must be lodged with the court until the date of the hearing at which the account is approved. The court may return the statements to the tendering party to hold until the account becomes final. These statements must be marked "Confidential Bank and/or Financial Statements for Accounting Purposes" and follow local rule 4.3.2 for lodging documents.

E. For purposes of this section, "institutions" is defined in Probate Code section 2890, subdivision (c).

F. For purposes of this section, "financial institutions" is defined in Probate Code section 2892, subdivision (b).

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.15.3 ALLEGATIONS RE: CLAIMS

The report accompanying any accounting or waiver of accounting must include the following information:

A. Whether any Notice of Administration was given to creditors within the last 30 days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Probate Code section 9051.)

B. If all Notices of Administration were given prior to the last 30 days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.15.4 REPORTING PAYMENT OF DEBTS

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

A. Identification of the creditor, the amount and the date paid;

B. The debt was justly due from the decedent's estate;

C. The debt was timely paid in good faith;

D. The amount paid was the true amount owed by the decedent and was reasonable; and

E. The estate is solvent.

(Adopted, eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

4.15.5 PROPERTY TO BE DISTRIBUTED MUST BE LISTED

A. The petition for distribution must list and describe in detail all property to be distributed, including cash on hand.

B. The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

C. Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

D. The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

E. Description by reference to the inventory is not acceptable.

F. The value of each individual asset on hand and the total value of the assets must be set forth.

(Adopted 1/1/90; Renumbered eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.15.6 ALLEGATION RE: CHARACTER OF PROPERTY

A. A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

B. An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

C. Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

D. The court will authorize filing of a late election only upon showing of good cause.

(Adopted 1/1/90; Amended 7/1/91; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.15.7 COMPLIANCE WITH NOTICE—MEDI-CAL AND CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

Before the court will authorize distribution, there must be a showing of compliance with notice requirements of Probate Code section 9202 to:

A. The Director of Health Services or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

B. The Director of the California Victim Compensation and Government Claims Board or a showing that the notice thereunder is not required because an heir is not confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm or other local correctional facility.

C. The Franchise Tax Board, for estates for which letters were issued on or after July 1, 2008.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

4.15.8 VOUCHERS

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed.

(Adopted 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

4.15.9 DAMAGES FOR WRONGFUL DEATH AND FOR PHYSICAL INJURY OF DECEDENT

A. Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.15.10 NOTICE TO PRIOR REPRESENTATIVE OR COUNSEL

If there has been a change of personal representative or a substitution of counsel, notice of hearing must be given to such prior representative or counsel of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel is on file; or

B. An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

4.15.11 PETITION FOR AUTHORITY TO CONTINUE ADMINISTRATION

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed 12 months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 16
FEES AND COMMISSIONS

4.16.1 OFFICE AND TRAVEL EXPENSE

A. Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

2. For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 17
DISTRIBUTION

4.17.1 DISTRIBUTION TO MINOR

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor or a disabled adult.

B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed $5,000 when distribution is made pursuant to Probate Code section 3401.

C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Probate Code section 3900 et seq.).

(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.17.2 DISTRIBUTION UNDER PROBATE CODE SECTION 13101 AFFIDAVIT

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

4.17.3 BLOCKED ACCOUNTS

In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

4.17.4 DISTRIBUTION TO DECEASED BENEFICIARY

When an heir or beneficiary dies during administration of an estate, the decree must provide for distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.17.5 ASSIGNMENT OF INTEREST IN ESTATE

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment that it was voluntarily made and was not grossly unreasonable. The terms of said assignment will be set forth in the Order for Distribution as set forth in Rule 4.7.2, infra.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.17.6 Preliminary Distribution Bond

A. If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

4.17.7 Receipts on Preliminary Distribution

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

4.17.8 Receipts on Final Distribution

A. Receipts for property received on final distribution must be signed by the (1) distributee, unless there is a showing of good cause why the distributee cannot sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

B. A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.17.9 Order of Final Discharge

The court will not sign the order of final discharge until all receipts on distribution are filed and all remaining property withheld from distribution is properly disbursed and/or distributed by the personal representative as alleged in a separately filed declaration.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

4.17.10 Requests to Withhold Funds from Final Distribution

In every case where the Petitioner requests to withhold $10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.

(Adopted 1/1/2006; Rev. 1/1/2009)

4.17.11 Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when more than $2500 is withheld at the time of the final accountings. The court will set a review hearing for amounts withheld in excess of $10,000. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The starting balance of the supplemental accounting must be for the amount withheld only.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/200; Rev. 1/1/2009; Rev. 1/1/2010)

CHAPTER 18
CONSERVATORSHIPS

4.18.1 Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2341, must complete an education class as ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.

(Adopted 1/1/2006)

4.18.2 Temporary Conservatorships

A. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made as follows:

1. Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge;

2. The proposed conservatee is present or if the proposed conservatee is unable to attend;

a. the proposed conservatee is hospitalized, has notice of the ex parte hearing and its purpose, and cannot attend for medical reasons that must be supported by a physician's declaration;

b. evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; or,

c. in appropriate circumstances where capacity is not an issue, the proposed conservatee has consented and waived notice.

3. There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment.

4. Petitioner must state in the Ex Parte Application whether there are known objectors.

a. If there are known objections, absent good cause, the matter will be set for a noticed hearing; or

b. If the petitioner desires to proceed without notice to a known objector, the petitioner must demonstrate by competent evidence the need to waive notice based on good cause.

5. Unless good cause is shown, the report of a court appointed attorney is on file.

6. Absent good cause, 24-hour notice has been given to the proposed conservatee's spouse or domestic partner, and all relatives within the second degree.

7. In matters where the application is made primarily to make health care decisions a declaration is on file by petitioner and court appointed counsel setting forth reasons why temporary conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.

B. If it appears that a temporary conservator is necessary, but that notice should be given to the proposed conservatee or any other person, the petition will be set for the first conservatorship calendar not less than five days away and should be walked through Probate Examining by counsel to assure proper setting.

C. No initial appointment of a temporary conservator may exceed a period of 30 days, but such appointment may be extended by the court to the date of the hearing on the permanent conservatorship. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the initial appointment and there are no objections.

D. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.

E. Good cause is defined as those circumstances where it is essential to protect the proposed conservatee, or the proposed conservatee's estate, from immediate and substantial harm.

F. Whenever an ex parte temporary conservatorship is sought and a waiver of notice is requested, or presence of the proposed temporary conservatee is not excused by statute, it must be accompanied by a proposed order which includes factual findings reflecting the substantial harm posed to the proposed conservatee, or the proposed conservatee's estate.

G. The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.

H. A petition for appointment of a temporary Conservatorship of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

I. All petitions for temporary conservatorship must be submitted with an extra copy of the petition and all related documents for the Court Investigator.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

4.18.3 Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, when the

conservatorship expires, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to:

The LPS conservator;

Counsel representing the LPS conservatee; and

All persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion is to be included in the conservatorship. (Prob. Code, § 3051.)

D. Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or grandchildren and must list their names, current addresses and telephone numbers, relationship to the proposed conservatee, and whether they are minors or adults (e.g., "John Smith, adult grandchild," or "John Smith, grandchild age 13").

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050, Investigator Referral and, the Duties and Liabilities form. The petition will be rejected for filing if required forms are not submitted with the petition. A copy of such forms must also be filed for the Court Investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional conservator (PPC), their current licensing status, the expiration date of their current registration and their state license number.

G. The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

H. When the proposed conservatee is, or was, the subject of a guardianship, the "Petition for Appointment of a Conservator" must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

I. When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence and name of the trust, the date the trust was established, whether the trust is under court supervision, as well as the petitioner or proposed conservatee's status and interest therein must be disclosed in the petition.

J. The Petition for Conservatorship must state, with specificity, evidence to support a finding that petitioner has standing pursuant to Probate Code section 1820. The court generally considers an "interested person" and/or "friend" to include the proposed conservatee's physician, accountant, stockbroker, neighbor, or other such acquaintance. (Prob. Code, § 1820, subd. (a)(5).) Where petitioner's relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given to the Public Guardian.

K. Whenever the petitioner is not a family member a separate verified declaration containing the following information must be submitted:

1. The due diligence efforts of the petitioner to locate family members, friends and neighbors, and to ascertain the proposed conservatee's preferences in appointing a conservator, or explain why it was not feasible to do so.

2. The efforts of the petitioner to discuss with family members and friends the proposed conservatee's preferences in appointing a conservator.

3. A description of the petitioner's prior relationship, and contacts with, the proposed conservatee. If the petitioner was not nominated by a relative, or the proposed conservatee, the petitioner must set forth the specific circumstances under which he or she became involved with the proposed conservatee.

L. When filing a petition for the appointment of a conservator or successor-conservator, the petitioner must file an extra copy of the petition and all subsequent documents regarding the petition for use by the Court Investigator.

(Adopted 1/1/1990; Rev. 1/1/1991; 7/1/1996, Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005;

Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

4.18.4 Reserved for Future Use

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Del. 1/1/2009)

4.18.5 Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed Conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to Conservatee's lack of capacity to consent to medical treatment.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

C. If the conservatorship petition is premised on the need to exercise medical authority, the petitioner must explain why a Probate Code Section 3200 Petition is not the least restrictive alternative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

4.18.6 Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5 may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM IV).

C. A Capacity Declaration—Conservatorship (GC-335) and Dementia Attachment (GC-335A) must be filed in support, but must address each required finding per Probate Code section 2356.5, subdivision (f)(3), and therefore an additional declaration of physician may be furnished.

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (See also Rule 4.18.12.)

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

K. A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree. An "Order Prescribing Notice" need not be submitted in addition to the requirements of this subsection.

(Adopted 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

4.18.7 Independent Powers: Sale of Residence

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis, upon showing of immediate need, if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

4.18.8 Consent of Conservator to Act

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

4.18.9 Court Investigation/Response to Court Investigator's Report

A. Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e. as provided in California Probate Code sections 1826, 1848 or other appropriate section), a Referral for Court Investigator must be filed with the Petition for Appointment of Probate Conservator.

B. No Order Appointing Court Investigator is required because the court has made a general order appointing the court investigators for all cases.

C. If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented, and the referral must be filed. Counsel must call the Court Investigator to alert him or her of the need for an investigation. If this is not accomplished at least ten days before the hearing date, a continuance ordinarily will be required.

D. Petitioner must cooperate with the Court Investigator in the preparation of a Court Investigator's Report and must use all reasonable efforts to timely provide appropriate information as requested by the Court Investigator.

E. When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel and/or the conservator subsequent to the establishment of the conservatorship, the conservator must promptly file a report responsive to the concerns addressed by the investigator or court appointed attorney.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.18.10 Limited Conservatorships

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.18.11 Bond Requirements

A. Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing. If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.18.12 Appointment of Counsel for Conservatee or Patient

A. The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause

B. Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

1. Make a recommendation as to the issues at hand.

2. Document the services performed by counsel.

3. Include a fee request in the prayer.

4. Include a recommendation regarding the ability or inability of the conservatee or proposed conservatee to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by such conservatee or by the County of San Diego.

5. Make a recommendation whether or not counsel may be discharged. In the case of an appointment under Probate Code section 2356.5, counsel will not be discharged.

6. State that Counsel has reviewed Rule 4.21.7 herein regarding conflict of interest in a conservatorship proceeding.

7. State that Counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

4.18.13 Successor Conservator

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.18.14 Conservatorship Assessments

Probate Code section 1851.5 provides that an assessment will be made against the estate of each conservatee for the cost of any investigation made by the Court Investigator under appropriate statutes. The assessment for investigations by the Court Investigator is set by the court. The assessment is due and must be paid immediately upon receipt of the investigator's report. The court will routinely check for the payment of assessments when any petition in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.18.15 Investments by Conservator

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The court will not approve the following:

1. Unsecured loans.

2. Loans to relatives.

3. Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may continue managing investments specified in Probate Code section 2459, subdivision (b), which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

4.18.16 SUBSTITUTED JUDGMENTS IN CONSERVATORSHIPS PROBATE CODE SECTION 2580

Where the petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the trust must provide, unless otherwise ordered, that the trust is subject to continuing court supervision under the Probate Code. Absent an order of the court to the contrary, all trust assets must remain within the State of California. In the case of securities, cash and other items of intangible personal property, the assets must remain on deposit with an entity registered with the California Secretary of State to do business in California.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

4.18.17 Accounts and Reports of Conservators

A. All accounts must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575, unless ordered by the court.

B. Reports must contain the current address and whereabouts of the conservatee, and describe the conservatee's status and condition.

C. Reports must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income.

D. The report must also show any blocked bank accounts.

E. Counsel shall submit an additional copy of any current account for the court investigator with an investigator referral attached to the front of the accounting.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2010)

4.18.18 Notices

A. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

B. In circumstances where the Conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009)

4.18.19 Reserved for Future Use

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Del. 1/1/2009)

4.18.20 Reserved for Future Use

(Del. 1/1/2008)

4.18.21 Fees for Conservators and Counsel

A. The court will not grant a fee request without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be set forth in a separate declaration, and must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. Conservators must submit a completed Probate Court approved "Fee Request Declaration" with all requests for compensation in excess of $750.00.

E. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Conservators and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving account.

F. The court may consider fee requests for work performed during the current accounting period, and fees related to the report and accounting for the current accounting period.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

4.18.22 Required Form of Accounts

A. The first accounting must be for a period not to exceed one year from the date of appointment.

B. A final account must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.

C. The final account must allege whether or not all income and other taxes which became due and payable by conservatee during the period of the conservatorship have been paid.

D. In the final account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

E. In all cases, notice must be given to all persons entitled to receive property.

F. All accounts must disclose the existence of a trust where the conservatee is a vested beneficiary, the current fair market value of the conservatee's interest, whether the conservator is a trustee, whether counsel for the petitioner is also attorney for the trust and/or trustee, and whether fees approved in the account are to be paid from the trust.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

4.18.23 EADACPA Proceedings

When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.10.

(Adopted 1/1/2005; Renum. 1/1/2006)

4.18.24 Court Ordered Review Hearings

A. After the hearing approving a Petition for Conservatorship of the Person or Estate, the court will set compliance and review hearing dates as follows:

1. A 90 day compliance date and 120 day review date. The conservator of the Person is to provide proof of the filing with the court of a Level of Care Evaluation (Prob. Code, § 2352.5) and the Notice of Rights of Conservatee (Prob. Code, § 1830) at or before the compliance date. The conservator of the Estate is to file an inventory and appraisal (Prob. Code, § 2610) at or before

the compliance date. Upon the filing of the required materials, the review hearing will be taken off calendar. Should the conservator fail to fully comply with the above referenced statutes, the conservator will be required to appear at the review hearing date.

2. A 365 day compliance date and a 395 day review date for Estates. The Conservator of the Estate is to file the account prior to the compliance date. This report is to coincide with the Court Investigator's Report (Prob. Code, § 1850, subd. (a)(2)). Upon the filing of the account, the review hearing will go off calendar. Upon review of the Court Investigator's Report, the court may pre-approve the Report and set the date for the next review hearing; an appearance will not be required.

B. If the materials required by paragraph A above have not been filed by the date ordered by the court, the conservator and counsel, if any, must appear at the review hearing and must show cause why the conservator should not be suspended, removed, or otherwise sanctioned pursuant to Code of Civil Procedure section 177.5 or 575.5 and/or why counsel should not be appointed to represent the conservatee. The court, in its discretion, may make additional orders as appropriate.

(Adopted 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

4.18.25 Waiver of Account Involving Public Benefit Payments

The court may enter an order that the Conservator need not present an account pursuant to Probate Code section 2628. The order may be obtained, in advance of, or subsequent to, the account due date, by filing and serving a petition requesting an order waiving account. The petition must contain allegations for the current account period as required by Probate Code section 2628, subdivision (b). If authority is granted to waive future accounts, the conservator must annually file, prior to the review hearing required by Local Rule 4.18.24, a verified declaration stating that the conditions specified in Probate Code section 2628, subdivision (b), have been met for the applicable accounting period. If the conditions have not been met for any subsequent accounting period, an account must be filed for that account period as required by Probate Code section 2620.

(Adopted 1/1/2008)

4.18.26 Petition for Transfer

All orders transferring a conservatorship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008; Rev. 1/1/2009)

CHAPTER 19
GUARDIANSHIPS

4.19.1 Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made by separate declaration and order as set forth at California Rules of Court, rule 7.1012.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.19.2 Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

C. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

D. Allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, must not appear in the petition, but may be submitted on a separate document that must be held as a separate confidential document. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.19.3 Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said co-habiting adult.

B. Written consent of the co-habiting adult must be filed with the court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

4.19.4 Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

4.19.5 Investigation

A. Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations in San Diego County will be done by the Family Court Services, Health and Human Services Agency (Guardianship Unit) or the Court Investigator as follows:

(For these purposes, relative is defined by Prob C §1513, subd. g.)

1. Guardianship of the Person, or Person and Estate—Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services with petition for appointment. (Fill out order, check #1.)

b. Call Family Court Services for an appointment within three days of filing. Locations and phone numbers can be found at www.sdcourt.ca.gov.

c. Follow directions received from Family Court Services.

d. At the discretion of the court, an abbreviated report may be ordered in lieu of a full investigation.

e. Hearings are set no sooner than 60 days from filing to allow Family Court Services to Prepare the investigation report.

2. Guardianship of the Person, and/or Estate-Non-Relative.

a. Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Submit the Order Directing or Waiving Investigation to Probate Services (Fill out order, check #2.) with the petition for appointment.

c. Send a second copy of the petition only to Department of Social Services, Guardianship Unit, at the address listed in their instructions. This will expedite assignment for investigation and minimize court continuances.

d. Hearings are set no sooner than 60 days from filing.

3. Guardianship of the Estate only—Relative or Non-Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services. (Fill out order, check #3.) with the petition for appointment.

b. Send copy of Order Directing or waiving investigation to the Court Investigator to initiate investigation along with a completed Guardianship Questionnaire and fee.

c. If a waiver of court investigation is requested, submit the "Application for Waiver of Investigation", "Guardianship Questionnaire" and "Order Directing or Waiving Investigation" to the Probate Business Office. (Fill out order, do NOT check a

box.)

d. If waiver is approved, appointment will proceed. If waiver is denied, counsel will receive a copy of the Order Directing Investigation and should contact the Court Investigator.

B. If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.19.6 Bond at Appointment and Accounting

A. The court will impose a bond pursuant to Probate Code section 2320 and California Rules of Court, rule 7.207, or require the funds to be placed in blocked accounts. In a guardianship, the relationship of parent does not constitute good cause for waiving bond.

B. The report and account must allege the amount of bond in effect and whether it is sufficient to cover personal property, income and recovery bond. Additional or reduced bond may be suggested as needed.

C. See Rule 4.18.11, Bond Review Hearing, which also applies to appointment of guardians of the estate.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

4.19.7 Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to transfer the minor to another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

4.19.8 Investments by Guardian

A. See Rule 4.18.15.

B. The guardian should also consider the circumstances of the estate, indicated cash needs and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

4.19.9 Timely Accounts and Reports

A. The court will consider, on an ex parte basis, a 30 day extension of the time to file an account pursuant to Probate Code section 2620.2. Failure to file a timely accounting and set a hearing, as prescribed in Probate Code section 2620.2, may be deemed contempt of court and subject the guardian to sanctions pursuant to Code of Civil Procedure section 1209 or 177.5.

B. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

C. Every guardian of the person of a minor must file a report on the status of the guardianship. This report is due by its "compliance date" or not later than one year after the initial appointment. Thereafter, reports will be due annually. Failure to file the report and appear in court when required to do so may constitute "good cause" for the court to remove the guardian from his or her office.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.19.10 Required Form of Account

A. Accounts must follow the format prescribed in Probate Code sections 1060 et seq. and 2620, subdivision (a); California Rules of Court, rule 7.575; Local Rule 4.15.1 and the confidentiality and labeling prescribed by Local 4.15.2, subsection D.

B. Where a guardian accounts for assets of more than one minor the accounting for each minor must be set forth separately within one report.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.19.11 REPORT TO ACCOMPANY ACCOUNTING

A. The report of guardian must give the current age, status and whereabouts of minor.

B. The guardian's current address must be set forth in the report.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2003; Renumbered 1/1/2006; Revised 1/1/2007)

4.19.12 REQUEST FOR USE OF MINOR'S ASSETS

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

4.19.13 FEES AND COMMISSIONS IN GUARDIANSHIPS

A. The court will not grant a request for fees without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Guardians and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving accounting.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

4.19.14 Court Appointed Attorney and Guardian ad Litem

A. Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary. Appointment of a guardian ad litem may be requested by ex parte petition.

B. Any report required of a court appointed attorney or guardian ad litem must be filed no later than five days before the scheduled hearing.

C. Counsel appointed by the court to represent minors must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

1. Make a recommendation as to the issues at hand, except where the attorney holds a reasonable belief that such recommendation is likely to result in a disclosure that would be restricted by or prohibited by Evidence Code sections 950 et seq.

2. Document the services performed by counsel.

3. Include a fee request in the prayer.

4. Include a recommendation regarding the ability or inability of the parents to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by the parent(s) or by the County of San Diego.

5. Make a recommendation whether or not counsel may be discharged.

6. State that Counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

4.19.15 Petition for Transfer

All orders transferring a guardianship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008)

CHAPTER 20
TRUSTS

4.20.1 GENERAL

In all trust matters where an issue involves the interpretation of or change to the trust, the party seeking an interpretation or change to the trust shall lodge a copy of the trust with the court. By ex parte application, a party may seek to limit the scope of the lodgment.

(Adopted effective 1/1/2007)

4.20.2 ACCOUNTS

A. Accounts filed by trustees must conform to these rules and Probate Code Section 1060-1064.

B. The value of the property set forth in the decree of distribution, or a reconciliation thereof, must be the starting balance of the first account.

C. Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

D. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/90; Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renumbered 1/1/2006; Renumbered and revised 1/1/2007)

4.20.3 PETITION TO DETERMINE TITLE IN TRUST MATTERS (PROBATE CODE SECTION 850)

In trust matters filed with the court to determine the title to property under Probate Code Section 850, the following allegations are required to be set forth in the petition:

A. The vesting of each asset at all relevant times;

B. Evidence that each asset was placed in trust;

C. Evidence of every transaction affecting title to each asset in question during the relevant time.

D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction.

E. The value of each asset to be transferred.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006; Revised 1/1/2007)

4.20.4 Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee or petitioner will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010)

4.20.5 Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition. As to such a petition, the court will require 30 days' notice to beneficiaries.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010)

4.20.6 Special Needs Trusts

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to Local Rule 2.4.6C, the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.

2. A payback provision must be inserted as required by title 42 of the United States Code section 1396p(d)(4)(A).

3. Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.

4. Dispositive provisions must include disposition to heirs at law after payback required by title 42 of the United States Code section 1396p(d)(4)(A).

B. Once the trial court has sent the trust to the Probate Court for review, it will be assigned to an Examiner for review and processing.

C. If the Probate Court approves the Special Needs Trust or Trust, a determination will be made whether the trust must be returned to the Probate Court to be brought under the Probate Court's jurisdiction. The trial court will make an appropriate order thereon, and the trustee of the newly established trust must file a "Review of Compliance with Probate Code section 3602 or 3611" with the Probate Court within 60 days.

D. A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number. Petitioner will include a copy of the Special Needs Trust and the order establishing the trust with the petition which opens the new trust case.

E. A Special Needs Trust or Trust established by Probate Code sections 2580 and 3100 must include the same requirements as listed in rule 7.903 of the California Rules of Court and as listed in subsection A. (1-4) above.

(Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010)

4.20.7 Fees and Commissions in Trusts

A. A separate declaration setting forth the information required by California Rules of Court, rule 7.776 must accompany any request for approval of fees and may not be included in the body of the petition. The trustee must include the hourly rate upon which the fee request is based. Institutional trustees seeking approval of fees premised on fee schedules must also submit their published fee schedule for the period involved.

B. Attorneys' fee requests must be accompanied by a separate declaration and must comply with California Rules of Court, rule 7.702.

C. On petition the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. In fixing the amount of the periodic payment, the court must take into account the services to be rendered on a periodic basis and the reasonable value of such services. The trustee may make payments pursuant to the court's order only if the services described in the petition are actually rendered. The payments made are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.

D. In a trust accounting, an allegation must be made as to the total amount of attorneys' fees paid during the applicable accounting period.

(Adopted 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010)

4.20.8 Petitions for Modification or Termination of Trusts

A. Petitions seeking the amendment of a trust must set forth the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

B. Petitions seeking authority to modify or terminate a trust pursuant to *Probate Code section 15403* must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary's interest as provided in *Probate Code section 15300, et seq.*

C. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee's bond unless the petition contains allegations upon which the court may make the finding required by *Probate Code section 15602(b)*.

(Adopted 1/1/2008)

CHAPTER 21
MISCELLANEOUS

4.21.1 Withdrawal of Counsel of Record

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, Ziegler v. Nickel (1998) 64 Cal.App.4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

4.21.2 Appointment of Probate Referees

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

4.21.3 Reserved for Future Use

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Del. 1/1/2009)

4.21.4 Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

4.21.5 Dismissal of Proceedings

A. Proceeding May Not Be Dismissed. Once a case number has been assigned to a probate estate, conservatorship, guardianship or trust proceeding, the entire proceeding may not be dismissed, except upon duly noticed motion, and order of the court.

B. Individual Petitions. A petition may be dismissed only with proper notice and upon an order of the court. Requests for dismissal, with or without prejudice, may be made by the petitioner either in writing or orally at any time prior to the commencement of trial. The court considers notice adequate if given to the persons entitled to notice of, and in the manner provided for, the petition for which dismissal is sought. The court may, upon good cause shown, waive or shorten the notice period as may be appropriate.

C. "Off Calendar." A petition may be taken "off calendar" by the petitioner or by order of the court. An order taking a petition "off calendar" vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. A petition may not be re-set for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law. Proceedings that have been taken off calendar are subject to dismissal for lack or delay in prosecution in accordance with the Code of Civil Procedure section 583.110 et seq.

D. Objections and Responses. An objection and/or response may be withdrawn by the party originally filing it upon filing of a verified statement of withdrawal, and providing notice of such withdrawal to all persons entitled to notice of the original filing.

E. Objections to Dismissal or Withdrawal of Objections/Responses. Any party, or interested person, may object to the dismissal or withdrawal by filing opposition within fifteen days of notice of the request for dismissal or withdrawal. The court may set a hearing on the request for dismissal or withdrawal, or enter an order based upon the pleadings.

F. Procedure for filing of Request to Dismiss. A party seeking to dismiss a petition must file the appropriate pleading or form requesting dismissal, and serve the same with the notice required herein.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

4.21.6 Declaratory Relief Petitions (Prob. Code, § 21320)

A. A copy of the proposed, unsigned and unverified petition marked "proposed" below the caption, must be attached to the Probate Code section 21320 application. The Probate Code section 21320 application must be accompanied by points and authorities in support thereof.

B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved portion thereof, signed and verified must be filed with the court and set for hearing. The wording "proposed" must be deleted from the petition to be filed.

C. The court will not grant a petition by the process of redacting or amending the underlying proposed petition.

D. If objections are filed, the matter will be set for the next available law and motion calendar not earlier than 30 days from the date of the hearing. In the North County Division, if no objections are filed, the matter will be heard as scheduled. In the Central Division, if no objections are filed, the matter will be deemed submitted to the court for decision pursuant to San Diego Probate Rule 4.22.5 and a ruling will be forthcoming within 30 days.

(Adopted 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

4.21.7 Disclosure by Conservators, Guardians, and Attorneys

Conservatees and Wards are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the court at their earliest opportunity in the following circumstances:

A. Conservators. A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent's Estate] must disclose all present and past relationships.

B. Attorneys.

1. An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

2. An attorney for a Ward or proposed Ward, or a Guardian or proposed Guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

3. In complying with this rule an attorney shall not be required to violate an existing attorneyclient privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

C. Guardians. A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent's Estate) must disclose all present and past relationships.

(Adopted 1/1/2006)

4.21.8 Reserved for Future Use

(Del. 1/1/2009)

CHAPTER 22
CONTESTED MATTERS

4.22.1 Introduction

When written objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court, the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.22.2 Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be set as follows:

A. By Statute or Rule of Court.

B. Notice Not Prescribed. If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be 30 days.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as

required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a Certificate of Progress (on the form approved by the Superior Court) at least two court days prior to the hearing. If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest, pursuant to the civil rules of San Diego Superior Court (Division II). When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.

(Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.22.3 Service of Notice

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a Certificate of Progress (on the form approved by the Superior Court) must be filed at least two (2) court days prior to the hearing.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006)

4.22.4 Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing, filed and served either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three court days before the next scheduled hearing date on the petition or pleading. If written objections have not been filed in accordance with this rule, the court will either continue the matter to allow compliance with this rule or decide the matter as if no objection had been made pursuant to CRC 7.801. (Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010)

4.22.5 Determination of Contested Matters

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court may determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter.

If counsel desire to submit trial briefs, they must be filed at the business office of the Probate Court and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five count days prior to the date set for the short cause hearing.

Due to the "Short cause" nature of this hearing, the court will not entertain, receive or read responsive pleadings to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 and 4.22.9 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a "trial"), the court may set the matter for a case management conference (see Rule 4.22.7 below).

E. EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

F. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010)

4.22.6 Meet and Confer, Joint Case Management Report

If a contested matter is set for a case management conference, counsel must, unless excused by the court:

A. Meet and confer no later than 20 days before the case management conference.

B. File with the court a "Case Management Statement" (CM-110) as Required by California Rules of Court, rule 3.725. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN SANCTIONS BEING IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 575.2.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

4.22.7 Case Management Conference

At the case management conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the "Case Management Statement" (CM-110) and the representations of counsel:

1. Trial date;

2. Trial readiness conference date;

3. Discovery cut-off date;

4. Law and motion cut-off date;

5. Dates for the exchange of experts;

6. Settlement conference date, if requested (see Rule 4.22.10).

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause.

E. Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

4.22.8 Joint Trial Statement

Unless dispensed with by the court at the Case Management Conference, no later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Joint Trial Statement. The Joint Trial Statement must contain the following:

A. Summary Statement of Facts, including, where applicable, the following: date of decedent's death and dates of wills, codicils and other operative documents; identification and inclusive dates of appointment of the fiduciary (administrator, executor, conservator, trustee, etc.); names of the parties and their counsel; dates and substance of prior relevant court orders; identification of pleadings previously filed which are relevant to the action; a summary of the case so as to apprise the court of the nature of the action.

B. Statement of Uncontested Material Facts.

C. Statement of Contested Material Facts.

D. Statement of Contested Material Issues. Counsel must set forth a concise statement and comprehensive discussion of each contested issue, a list of all documents (or other tangible evidence) to be offered at the time of trial regarding each issue and a summary of the content of each such document, as required by the court. Each contested item of an account must be specifically identified. Counsel will also provide as an exhibit a copy of each appraisal and report of an expert to be offered at the time of trial.

NOTE: FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN ORDER EXCLUDING THE DOCUMENT, SCHEDULE, SUMMARY, REPORT OR APPRAISAL, OR TESTIMONY OF THE EXPERT AT TRIAL.

E. List of Witnesses Indicating Whether Each Witness is a Percipient or Expert Witness. Except for impeachment witnesses, the court may, in its discretion, refuse to permit any witness to testify who is not listed.

F. Index of Exhibits. Counsel must pre-mark and jointly index all exhibits numerically as court exhibits. The index must set forth the following as to each exhibit: exhibit number; by whom offered; a description of each exhibit sufficient for identification; whether the parties have stipulated to admissibility, and, if not, the legal grounds for objections to admissibility. Exhibits must be numbered serially, as court exhibits, beginning with the number "1" (one); a block of exhibit numbers may be allocated to each party. If discovery, such as depositions, requests for admissions, interrogatory responses or any other form of discovery responses, is to be used in lieu of live testimony at trial, such discovery must be set forth in the exhibit index together with the legal grounds for objections to admissibility. Counsel must also comply with the provisions of Code of Civil Procedure section 2025, subdivisions (1) and (u) with respect to the anticipated use of videotaped depositions. Counsel must prepare and exchange a written transcript of any other audio and/or video presentations intended to be used at trial in accordance with the California Rules of Court, rule 2.1040. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN AN ORDER EXCLUDING DOCUMENT(S) AND/OR EXHIBITS AT TRIAL.

G. Stipulations Regarding Admission of Evidence and Summaries of the testimony.

H. All Points and Authorities (legal arguments) on which counsel intends to rely.

I. A statement of the specific relief requested. The relief may be requested in the alternative.

J. The Joint Trial statement must be signed by all counsel (and litigants appearing in propria persona) who will appear and participate in the trial.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.22.9 Trial Readiness Conference; Sanctions

The Joint Trial Statement must be presented to the court at the Trial Readiness Conference.

A. Separate reports will not be accepted. The completed report must be presented to the judge at the scheduled conference. The function of the trial readiness conference is to assure that the matter is ready for trial.

B. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the trial readiness conference.

C. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Joint Trial Statement, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.22.10 Settlement Conference

Upon filing a written stipulation that the probate judge may act as both settlement judge and trial judge if the matter is not settled, which is signed by all parties and their attorneys of record the probate judge in the central division will preside at settlement conferences unless any party requests that another judge be designated or the probate judge determines it would be inappropriate under the circumstances. If another judge is to be designated, an effort will be made to select a former probate judge or a judge with extensive probate experience. Counsel may also, by unanimous approval, accept as settlement judge one or more temporary judges designated by the probate judge. If all parties, after the case management conference, agree upon a settlement conference to assist in resolving the matter, a settlement conference may be set ex parte.

Except in special circumstances, the probate judge in the North County Division will not hear settlement conferences. Where a judicial settlement conference has been agreed to or ordered by the probate judge, the probate department will assist the parties in arranging for a judge to preside over the settlement discussions.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

4.22.11 Trial Briefs and Motions in Limine

A. Unless otherwise directed by the court, all motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Prior to the time the matter is called for trial, the parties must provide the clerk of the trial court with a final joint exhibit list, which must include appropriate summaries, as set forth hereafter. The parties must also provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

C. If ordered by the court at the Case Management Conference, each party seeking a surcharge or to justify items of an account to which objections have been made in the Joint Trial Statement must prepare a summary of the documentary evidence supporting the request for surcharge or the accounting of contested items (e.g., canceled checks, receipts, bills, etc.). This summary must be included in the final joint exhibit list and exhibit binders.

(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

4.22.12 RESERVED FOR FUTURE USE

4.22.13 STATEMENTS AND DOCUMENTS NOT ADMISSIBLE EVIDENCE

All responsive pleadings and all other documents filed with the court concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

This rule also applies to proceedings conducted before two-attorney settlement panels in North County.

(Adopted eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006; Revised 1/1/2008)

4.22.14 ALTERNATIVE DISPUTE RESOLUTION IN CONTESTED PROBATE MATTERS

A. Statement of Purpose.

Contested estate, trust, conservatorship, guardianships and other matters covered by the Probate Code are uniquely appropriate for Alternative Dispute Resolution in the interests of prompt, efficient and economical dispute resolution. Mediation is the preferred method of alternative dispute resolution in contested matters. The Court therefore encourages parties to mediate their dispute and may order parties to mediation if appropriate.

B. ADR Defined.

Generally, Alternative Dispute Resolution ("ADR") is a term covering the full range of techniques designed to resolve disputes short of trial in the courts, including, but not limited to, mediation, binding arbitration, a judicially supervised settlement conference, a two-attorney settlement panel in North County, and neutral evaluation.

These rules apply to all methods of ADR except references and trials by reference pursuant to California Code of Civil Procedure sections 638-645.2.

C. Court Ordered Alternative Dispute Resolution Absent Objection

At the first practical opportunity in a contested matter, the court will order the matter to mediation unless a party objects. Additionally, the court may order the parties to an appropriate method of ADR at any time in an attempt to resolve the matter.

D. Court Determination Re ADR Upon Objection

At the time of the ADR assignment, a party may orally or in writing object to the need for ADR, the method of ADR selected, the selection of the neutral person or neutral panel, the method of payment of the costs of ADR, and/or the timing of ADR. The court has the discretion to make appropriate orders, which may include ordering the parties to meet and confer, ordering an appropriate

method of ADR, proceeding pursuant to Local Rule 4.22.1 et seq., or deferring ADR until discovery has been completed. If the court orders ADR, it may restrict discovery until the completion of ADR, but if all ADR efforts are ultimately unsuccessful, discovery will proceed in accordance with the Civil Discovery Act. The order for ADR may be made by a minute order or by a formal order at the request of any party..

E. Continuance Pending Completion of ADR.

Upon ordering ADR, the court may continue the proceeding to a date when ADR will be completed, or may set the matter for hearing or trial, as provided in Local Rule 4.22.5. If initial ADR is unsuccessful, the court may either continue the matter for further ADR efforts or, if the court concludes further efforts at ADR are not warranted, set the matter for such further proceedings the court deems appropriate.

(Effective 1/1/2004; Renumbered 1/1/2006; Revised 1/1/2008)

4.22.15 Parties Select ADR Facilitator

Upon ordering the parties to ADR, the parties and their counsel must jointly select a qualified mediator or ADR facilitator to conduct the ADR. If the parties are unable to select the method of ADR or the neutral ADR facilitator, the court, sua sponte or upon request, will provide guidance to the parties, including advising the parties of ADR programs commonly used in the area. If the parties ultimately cannot agree, the court will make appropriate orders.

(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

4.22.16 COSTS AND FEES

It is presumed that the parties will share equally in the costs of ADR. However, absent the agreement of all interested parties with regard to allocation of costs and fees, the court may, in its discretion, allocate the costs and fees of ADR to one or more of the interested parties to the contested matter, charge such costs and fees to the fiduciary (i.e., the executor, conservator, trustee or guardian of the estate) and/or order the fiduciary to advance such costs and fees. Further, if the court determines that any party acted in bad faith or unreasonably in the ADR process, the court may charge ADR costs and fees to such party. In circumstances where the court finds that continued litigation and the expenditure of funds in support thereof is not in the best interests of the estate or trust, the court may order that the costs and fees of mediation be advanced by the trust or estate, subject to later allocation.. For purposes of this rule, the term "costs and fees of ADR" include only those costs and fees directly relating to the ADR service and do not include the attorneys' fees or other costs of the parties.

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004; Renumbered 1/1/2006; Revised 1/1/2008)

4.22.17 ADR STATEMENT RE: IMPARTIALITY

Every person who conducts ADR pursuant to these rules must, as soon as practicable, disclose to all parties any facts that might reasonably cause any party to entertain a doubt as to the impartiality of such ADR facilitator. ADR facilitators will comply with all applicable disclosure standards, including, but not limited to, those found in California Rules of Court, rule 3.816.

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004; Renumbered 1/1/2006; Revised 1/1/2008)

4.22.18 [RENUMBERED TO 4.22.17]

(Deleted 1/1/2008)

4.22.19 RESERVED FOR FUTURE USE

(Deleted 1/1/2008)

4.22.20 RESERVED FOR FUTURE USE

(Deleted 1/1/2008)

4.22.21 RESERVED FOR FUTURE USE

(Deleted 1/1/2008)

CHAPTER 23
LAW AND MOTION AND DISCOVERY MATTERS

4.23.1 Preliminary Definitions and Procedure

A. An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure or Civil Code must be brought as a motion.

B. Parties may not bring unrelated requests for relief in a single motion but must file each in a separate motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2010)

4.23.2 Applicability of Division Two in Probate Proceedings

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

4.23.3 Filing Motion Papers

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed at least 16 court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to the Probate Business Office prior to the issuance of a hearing date.

C. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the court in support of the motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010)

4.23.4 Hearings

Once set, a matter may be continued only with a written order of approval from the court. A matter "continued" by stipulation without court approval will be taken off calendar. Once the court publishes a Tentative Ruling, the motion may not be taken off calendar or withdrawn.

(Adopted 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

4.23.5 Filing and Serving Opposition or Support Papers on Motion

A. Opposition, joinder and reply papers must be filed and served as provided in Code of Civil Procedure section 1005. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

B. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010)

4.23.6 Filing Within 3 Days of Hearing

When papers are filed within three calendar days of the hearing, service on opposing counsel must be by personal delivery (or by fax when permitted by Cal. Rules of Court, rule 2.306).

(Adopted 1/1/2006)

4.23.7 Filing of Proof of Service

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006)

4.23.8 Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. For all Probate departments, tentative rulings will be made available by telephone at 619-450-7381 and on the court's website at www.sandiego.courts.ca.gov (click on "tentative rulings" from the probate webpage) by 3:00 p.m. on the day before hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009)

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San Francisco County
Probate Rules

Effective January 1, 2010

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RULE 14—PROBATE

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RULE 14—PROBATE

14.0 Organization and Administration

14.1 Probate Department Administration

A. The Probate Department is presided over by the Probate Judge with the assistance of the Probate Commissioner and is administered by the Director and Assistant Director of the Probate Examiners and Investigators.

B. Telephone numbers for the Probate Department are as follows: Courtroom Clerk: 551-3702; Calendar Clerk: 551-3662; Probate Secretary: 551-3650; the Court Investigators: 551-3657; the status of calendared matters and the information recordings: 551-4000.

14.2 Obtaining a Hearing Date

Hearing dates are obtained at the time of the submission of a petition and a notice of hearing to the Clerk of the Court. Hearing dates are not given by telephone.

14.3 Requirement of an Appearance

A. The following matters require appearance of counsel and/or parties at the hearing:

1. Applications for appointment of permanent guardian or conservator. Appearance by proposed appointee, other than a corporate fiduciary, is also required. The minor must also appear if the appointment is for guardian of the person.

2. Termination of guardianship or conservatorship (other than on death of minor or conservatee, or minor attaining majority). Conservatee MUST appear. Minor MUST appear if there is a waiver of accounting.

3. Confirmation of sales of real property.

4. Petition for instructions.

5. Petition for probate of lost or destroyed will. Oral testimony will be taken only when requested by the Court.

6. Petitioner's attorney and proposed beneficiary must appear if the special needs trust waives bond and/or accountings.

B. All other matters (except as otherwise provided by law) may ordinarily be submitted without an appearance. Evidence to support such nonappearance matters should be contained in a petition verified by the petitioner and/or declarations under penalty of perjury timely filed before the hearing date.

14.4 Hearings re Probate Matters

Petitions for appointment of a conservator are heard on Thursdays at 9:00 a.m., and petitions for appointment of a guardian are heard on Tuesdays at 1:00 p.m., and both require an appearance. Requests for Elder or Dependent Adult Abuse Restraining Orders are heard on Wednesdays at 11:00 a.m. All other matters requiring an appearance are heard on Monday, Tuesday, and Wednesday calendars at 9:00 a.m. On the Monday, Tuesday, and Wednesday calendars, sales are heard first. All other matters are ordinarily heard in the following order: uncontested matters followed by contested matters requiring a hearing time of 20 minutes or less. Contested matters requiring a hearing time of more than 20 minutes may be specially set at the time of the scheduled hearing or will be placed on the end of the regular morning calendar if time allows. All interested counsel must be present for a special setting. Hearings requiring more than two Court afternoons will normally be referred to Department 206.

14.5 Review of Files Prior to Hearing

A. If a matter is unopposed and approved by the Examiner, it will be presented to the Court for signature and no appearance of counsel will be necessary. If the matter is not approved because it fails to satisfy statutory requirements or procedures of the Court, the Examiner will prepare notes setting forth such defects. In order to permit the attorney to address the procedural or statutory deficiencies before the hearing and to avoid the need for an appearance, the Examiner will fax or mail notes to the attorney. The Examiner may continue the matter two (2) weeks or more for compliance. If procedural or statutory defects are not cured, or if nonapproval is based on other issues, the matter will be put on the appearance calendar.

B. Counsel may telephone the rulings line (415-551-4000), visit the court's website (www.sfgov.org/courts) or view tentative rulings on the Court's electronic information center prior to the hearing to determine whether a matter has been approved, continued or placed on the appearance calendar. If a matter has been pre-granted, the calendar posted outside the Courtroom on

the day of the hearing will so state.

14.6 Submission of Proposed Order and Other Pleadings Before Date of Hearing

A. Order. Except in the case of confirmations of sales, orders including orders for appointment of guardian or conservator must be submitted to the probate courtroom at least two (2) weeks in advance of the scheduled hearing date, with the scheduled hearing date noted on the face sheet. Failure to submit the proposed order at least two (2) weeks in advance may result in a continuance for at least two (2) weeks. The proposed order should be prepared on the assumption that the petition will be granted.

B. Other Pleadings. In order for supplemental or opposition papers to be considered by the Court prior to the hearing, a courtesy copy of the papers must be delivered to the Examiners two (2) court days before the hearing with the scheduled hearing date noted on the face sheet.

C. Responses to Examiner's Notes. Responses to Examiner's notes must be filed no later than two (2) days before the hearing and endorsed filed copies delivered to the Examiner.

D. Pleadings Must be Filed. Unless otherwise specified, Examiners will not review any document until after it has been filed.

14.7 Availability of Approved Orders Signed by the Court

Approved orders signed by the Court will be available after 9:30 a.m. on the day of the hearing in Room 103. The Clerk will return endorsed filed copies of orders if a self-addressed, stamped envelope is provided.

14.8 Continuances

A. Requested by Counsel. Continuances requested by counsel may be made in Court or through the Calendar Clerk (415-551-3662). A continuance will not be granted if there is opposing counsel unless a request is made in open Court or by a timely stipulation of all counsel to a date to be arranged with the Courtroom Clerk.

1. If a matter has been specially set, i.e., at any time other than the regular 9:00 a.m. calendar, it may not be continued without the stipulation of counsel and the approval of the Judge or Probate Commissioner scheduled to hear the matter. (For this permission, telephone the Courtroom Clerk.)

2. Probate sales cannot be taken off the calendar or continued except for good cause and appearance of counsel at the time of the hearing is required.

B. Continuances by the Court. When an attorney fails to appear at a hearing, the matter will ordinarily be dropped from the calendar unless a further continuance has been requested. The Court may drop the matter from the calendar where successive continuances have been requested but no satisfactory progress is evident. If the hearing is required and there is no appearance, an Order to Show Cause or a citation may be issued.

14.9 Earlier Hearing Dates

To obtain a hearing date for a petition other than the hearing date available at the clerk of the court's office, the unfiled petition together with a declaration setting forth good cause and a suggested hearing date may be presented to the probate secretary at the Probate Department, Room 202.

14.10 Hearings Before Commissioner

The Commissioner may sit as a temporary judge (Judge Pro Tem) on stipulation of all parties litigant or their counsel. Should any party object to the Commissioner hearing the matter as Judge Pro Tem, the objection must be made at the time the matter is assigned or called for hearing. A failure to object shall be deemed a stipulation that the Commissioner may hear the matter as temporary judge.

14.11 Law and Motion

A. Departments Where Probate Matters are Heard.

1. Before a matter has been referred for trial setting. All law and motion matters except discovery motions are heard in the Probate Department. Discovery matters are heard in the Discovery Department.

2. After a matter has been referred for trial setting.

a. Motions for priority setting or for change of trial date will be heard by the Department of the Presiding Judge.

b. Discovery matters will be heard in the Discovery Department.

c. All other motions will be heard in the Probate Department.

B. Law and Motion Procedure in Probate Department.

1. Motions will be heard on Thursdays at 1:30 p.m.

2. Before filing a motion, the moving party must present the motion to the Probate Department clerk in Room 204 for assignment of a hearing date.

3. After receiving a hearing date, the moving party must file the motion and notice in Room 103. After filing, the moving party must bring an endorsed filed copy of the motion and notice to Room 202 directed to the attention of the probate staff attorney. Endorsed filed copies of all subsequent pleadings must be delivered to Room 202, attention staff attorney.

4. All filings and service must comply with CCP §1005, unless there is a specific applicable section of the Probate Code.

5. LRSF 8.3 (Tentative Rulings) applies to law and motion hearings in the Probate Department.

14.12 Discovery

All motions and other matters concerning discovery in probate proceedings shall be noticed for hearing before a Court Commissioner in the Discovery Department unless the Probate Judge directs otherwise.

14.13 Settlement Conferences

The Judge or Commissioner may schedule settlement conferences as requested by counsel.

14.14 Settlement Conference Statements

Settlement conference statements are due in the Probate Department five (5) Court days prior to the conference.

14.15 Will Contests

All will contests, objections to petitions for probate, or petitions for probate filed after the first petition must use the probate case number of the first petition filed in the decedent's estate.

14.16 Compromise of Claims

Petitions for compromise of minor's claims are to be filed and a hearing date set in Department 218 for hearing on the uncontested calendar.

14.17 Ex Parte Applications or Petitions. (See Appendix D.)

A. Ex Parte Applications or Petitions Requiring an Appearance other than for Appointment of Temporary Conservatorships and Guardianships.

1. Filing and Setting. The Probate Department hears an ex parte calendar at designated hours Monday through Friday in Room 202. An endorsed filed copy of the ex parte application or petition must be presented to Room 202 before a hearing date will be calendared. Petitioners must obtain a hearing date and time from the Probate secretary in Room 202 or by calling 415-551-3650. Petitioners may not set a hearing for more than two weeks in advance. No more than two (2) petitions per day are permitted by each attorney, law office or petitioner.

2. Notice. Petitioner must notify all interested or opposing parties by fax or telephone no later than 10:00 a.m. on the day before the scheduled hearing as provided by CRC, Rule 3.1203 and CRC, Rule 3.1204. A declaration regarding notice in compliance with CRC, Rule 3.1204 must be delivered to the Probate Department no later than 12:00 p.m. on the day before the scheduled hearing.

3. Opposition Papers. Opposition papers to an ex parte application or petition, if any, must be filed in the clerk's office and an endorsed filed copy delivered to the Probate Department before the ex parte hearing.

4. Petitions for Letters of Special Administration. See LRSF, Rule 14.30.

5. Ex Parte Petitions for Appointment of Temporary Conservators or Guardians. See LRSF, Rule 14.88

B. Presentation of Ex Parte Applications or Petitions Not Requiring an Appearance. For ex parte petitions not requiring a personal appearance, an endorsed filed copy of the petition may be left in the "Ex Parte In-Box" outside the Probate Department or mailed to the Probate Department. If a stamped, self-addressed envelope is provided, conformed copies of the signed order will be mailed to counsel; otherwise, signed orders may be picked up in the office of the Court clerk.

C. Contents of Petition. A petition for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing the order. Conclusions or statements of ultimate facts are not sufficient and a foundation should be shown for the petitioner's personal knowledge.

D. Citations. Where a Court order is required for the issuance of a citation, for example, to remove a personal representative (Probate Code §8500), an endorsed filed copy of the petition setting forth the relief requested, with hearing date affixed, must be submitted together with a separate ex parte petition requesting a Court order allowing the issuance of a citation. A separate order must also be submitted directing the Clerk's Office to issue a citation. Said petition may be submitted ex parte with no appearance required.

E. Temporary Restraining Orders/Orders to Show Cause/Orders Shortening Time.

1. All applications for temporary restraining orders (except those for Elder or Dependent Adult Abuse), orders to show cause or orders shortening time pertaining to probate matters, including Conservatorships and Guardianships, must be filed and an appointment made prior to presentation to the Probate Department at the ex parte hearing.

2. Applications for temporary restraining orders filed under the Elder Abuse or Dependent Adult Civil Protection Act must be filed at the Probate window in Room 103. If a party submits a completed request for a Temporary Restraining Order before 10:00 a.m., the Court order will be available after 2:30 p.m. that same day. If a party submits a completed request after 10:00 a.m., the Court order will be available after 2:30 p.m. the following court day.

F. Special Notice Allegation. All petitions for ex parte orders must contain a statement on special notice. The statement shall either recite that no request is on file and in effect or shall list the parties requesting special notice and shall attach the proof of service on such parties or specific waivers of notice.

G. Separate Order Must Accompany Petition. Except where a Judicial Council form is used, a petition for ex parte order must be accompanied by a separate order complete in itself.

H. Ex Parte Orders. An ex parte order may be signed by either the Commissioner or the Judge. If for any reason counsel desires the Judge's signature, then such matter should be presented to the Commissioner for initial review prior to the presentation to the Judge.

I. Order Prescribing Notice. Where an order prescribing notice is required, the petition must allege the names and addresses of all individuals to whom notice should be given and the method suggested.

J. Guardian Ad Litem. Petitions for the appointment of a guardian ad litem in a probate matter may be presented ex parte. Petitions for the appointment of a guardian ad litem in all other matters are to be presented in Department 206.

K. Retention of Litigation Counsel. Where a conservator or guardian of the estate, personal representative, special administrator, temporary conservator or guardian of the estate, or guardian ad litem seeks to retain separate litigation counsel, a petition for authority to enter into a fee agreement with litigation counsel may be presented to the Probate Department ex parte. The proposed fee agreement must be attached to the petition. Proposed contingency fee agreements will not be considered ex parte.

14.18 Procedural Questions

The Court does not answer procedural questions, give legal advice or render advisory opinions either by phone or letter.

14.19 Summary Determination of Disputes (Probate Code §9620)

Normally, §9620 summary determination hearings are conducted by the Probate Commissioner sitting as temporary judge pursuant to stipulation. Such matters may be calendared by calling the Courtroom Clerk.

14.20 Forms Approved by Judicial Council

See CRC, Rule 7.101. All two-sided forms must be properly tumbled or they will not be accepted for filing.

14.21 Captions of Pleadings; Identification of Attorney

See CRC, Rule 7.102. All pleadings must also identify the attorney in the form set forth in CRC Rule 2.111. In addition, the identification must show the name and capacity of the party for whom the attorney is appearing, e.g., John Jones, executor. "Petitioner" or "respondent" is not sufficient.

14.22 Verifying Pleadings

A. An executor, administrator, trustee, guardian or conservator is an officer acting pursuant to Court order. All accounts, petitions and other pleadings made in his or her official capacity must be personally signed and verified. The code provision allowing attorneys to verify certain pleadings in civil matters is not applicable to probate proceedings when the representative is acting in his or her official capacity. An exception is made in the case of an account filed by the attorney for a deceased or absconding fiduciary.

B. An unverified petition may be proved by filing a supplemental declaration by petitioner before the hearing. The declaration must identify the petition by caption and filing date.

C. Failure to verify where required by statute will result in the matter being continued, going off calendar or being placed on the appearance calendar, depending on the circumstances.

14.23 Amendments, Corrections and Alteration of Pleadings

A. Alterations. Once filed, no pleading may be altered on its face.

B. Description of Pleadings. See CRC §§7.101-7.104.

C. Correction of an Order. If an order has been signed but not yet filed, it may be corrected on its face and the correction initialed by the Court. However, if the order has been filed it can only be corrected by Court order. Such an order can be obtained by a verified petition, normally ex parte in the case of a clerical error or minor changes. The basis for the correction must be set forth. Before presenting such ex parte application to the Court, informal notice, such as a telephone call or a letter, must be given to the personal representative and any person affected. Proof of compliance with this rule must be presented to the Court before consideration of the petition. The original order is not to be changed by the clerk, but is to be used together with the order correcting it. If an amended order is submitted to correct the filed order, it supersedes the original order.

14.24 Material to be Included in Probate Orders

A. An order must be complete in itself in that it must set forth, with the same particularity required of a judgment in a civil matter, all matters actually passed on by the Court, such as, the date of the hearing, necessary findings, the relief granted, the names of the persons and descriptions of property or amounts of money affected.

B. A probate order should be drawn so that its general effect may be determined without reference to the petition on which it is based. Since no matter should appear after the signature of the Court, where exhibits are made part of an order, the Court's signature must appear at the end of the exhibits with an indication to this effect at the end of the order; however, exhibits to orders should be avoided.

C. The Court will not sign orders where the last page includes only the signature line.

14.25 Notice Requirements

A. Generally. Notice may not be mailed or published before the filing of the pleading requiring notice. Under the provisions of Probate Code §1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interest of any person may be adversely affected by the determination of the issues raised by the pleadings, such as, when the status of property is to be determined. The Court may also require a copy of the petition to be served with the notice.

B. Notice to Trust Beneficiaries. If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust and the representative is either named to act or is acting as the sole trustee, then the Court will require notice to beneficiaries as required by Probate Code §1208. In appropriate circumstances the Court may require the appointment of and notice to a guardian ad litem for potential beneficiaries if their interest may diverge significantly from those of the beneficiaries in being.

C. Notice on Termination of Guardianships and Conservatorships. See CRC, Rules 7.1005 and 7.1054. Notice must be given to

a former minor or conservatee on the settlement of a final account. Notice must also be given to the personal representative of a deceased minor or conservatee. If there is no representative of the estate, or if the representative of the estate is the same person as the guardian or conservator presenting the account, notice must also be given to the heirs and devisees of the deceased minor or conservatee.

14.26 Giving Notice of Hearing

When notice of hearing is required, whether by personal service, mailing or publication, the burden is on the petitioner to cause such notice to be given and to file the necessary proof of service. When furnished with two copies of the notice, the court clerk will post it as required, but will not mail or furnish proof of mailing or arrange for publication.

14.27 Declaration

A declaration may be used in lieu of an affidavit pursuant to CCP §2015.5.

14.28 Blocked Accounts

When the Court orders funds to be deposited into a blocked account whether for a personal representative, distribution to a minor, conservatorship or guardianship funds, the fiduciary must file the Judicial Council form "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account," MC 356, together with the teller receipt of the financial institution.

14.29 Spousal Property Petition

A. Filing Petition. If a spousal property petition is filed with a petition for probate of will or for letters of administration, the spousal property petition must be filed and noticed as a separate petition.

B. Required Allegations.

1. Source of Property. The petition must contain precise identification of the source of the property alleged to be community or quasi-community property. An allegation must also be made that none of the property was acquired by gift or inheritance or purchased with funds received by gift or inheritance. If any property is claimed to be community but was acquired by gift, devise, descent, joint tenancy survivorship, or similar means, the petition must state with particularity the way in which the property was converted to community property. For all transmutations of title to real or personal property made after January 1, 1985, there must be an express written declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

2. Claims Based on Document. If the community or quasi-community property claim is based on any document, a copy of the document showing signatures, when feasible, must be attached to the petition. However, if the document is lengthy and only portions of it are relevant to the claim, only the relevant portions need be attached. If it is believed that disclosure of the document would be detrimental, the document or the relevant portions may be paraphrased in the petition accompanied by a statement that a copy of the document itself will be made available to the Court.

14.30 Letters of Special Administration on Ex Parte Petition

A. Presenting Petition.

1. An endorsed filed copy of the Petition for Probate and the Petition for Letters of Special Administration must be presented to Room 202 before a hearing date will be calendared. (See LRSF, Rule 14.17A.)

2. Counsel and the proposed appointee (other than a corporate fiduciary) must personally appear at the ex parte hearing. Petitioner must give notice to the surviving spouse, the nominated executor, or any person whom the Court has determined is entitled to notice. Notice shall be by fax or telephone no later than 10:00 a.m. on the day before the scheduled hearing as provided by CRC, Rules 3.1203 and 3.1204.

3. The appearance of the Public Administrator is not required at the presentation of the ex parte petition for Special Letters of Administration.

4. If the petitioner is the named executor of the will, notice of the petition for special letters of administration to the heirs at law is required. If the petitioner is not the named executor of the will, notice must be given to the named executor, the heirs at law and all devisees under the will.

5. A declaration regarding notice in compliance with CRC, Rule 3.1204 must be delivered to the Probate Department no later than 12:00 p.m. on the day before the scheduled hearing.

6. The urgency and necessity of special letters of administration must be stated in the attachment to the petition.

7. Except in the instance of a contest, special letters will issue for only a specified period of time. Although preference is given to the persons entitled to letters testamentary or of administration, if it appears that a bona fide contest exists, the Court will consider the advisability of appointing a neutral person or corporate fiduciary.

B. Bond. The Court will usually require a bond even if the will waives bond and the beneficiaries waive bond. Probate Code §8481 (b).

14.31 Probate of Will and Letters of Administration

A. Holographic Will. When a holographic instrument is offered for probate, it must always be accompanied by an exact typewritten copy.

B. Foreign Language. When an instrument written in a foreign language is offered for probate, it must always be accompanied by a copy translated into English. All translations must be accompanied by a declaration setting forth the translator's qualifications and/or credentials.

C. Copies. Copies of all instruments offered for probate must be attached to the petition.

D. Listing Devisees and Heirs.

1. Even though a decedent died testate, the petition, as in the case of intestacy, must contain the names and relationships of all heirs of the decedent. An heir is any person who would be entitled to distribution of a part of the decedent's estate if the decedent died intestate. This includes those who would be heirs by virtue of Probate Code §6402.5, if the decedent had a predeceased spouse. When second generation heirs are listed, the deceased ancestor through whom they take (or would have taken) shall be named and his/her relationship to the decedent shall be stated.

2. All heirs, devisees, or other persons named in the will, and each person named as executor or successor executor must be listed on Attachment 8 to the petition. In addition, if the interest of the devisee is contingent as of the date of the petition or on the happening of an event, such as survivorship for a specific period, then the contingent beneficiary must also be listed. Also to be listed is each person provided for in the original will whose legacy has been revoked in a subsequent codicil.

3. The nominated trustee(s) of a trust created by the will or by a living trust should be listed as a devisee. A beneficiary of either a living or testamentary trust is not a devisee and need not be listed unless the personal representative and the trustee are the same person or there is no trustee. The trustee(s) and beneficiaries of the trust must be clearly indicated in item 8 (or on Attachment 8) of the petition. Probate Code §1208.

E. No Known Heirs. If the decedent had no known heirs, a declaration to that effect shall be filed setting forth the basis for that conclusion and the efforts made to locate any heirs.

F. Deceased Devisees and Heirs.

1. If a named devisee or heir predeceased the decedent or did not survive for the designated survival period, that fact must also be stated together with the date of death.

2. If an heir or devisee died after the decedent, that person should be listed with the notation that he or she is deceased and the date of death must be stated. If a personal representative has been appointed, the deceased heir or devisee should be listed in care of the name and address of his or her personal representative. If no personal representative has been appointed that fact should be alleged. All heirs and/or devisees of the deceased beneficiary must be listed.

14.32 Notice Requirements for Petitions for Probate

A. Persons to Whom Notice Must be Given. All heirs and devisees listed in the petition, the Attorney General if required under Probate Code §8111, and foreign consul if required under Probate Code §8113 must be given notice.

B. Method of Giving Notice. See CRC, Rule 7.50 et seq.

C. Requirement of Publication of Notice of Petition to Administer Estate. See CRC, Rules 7.53-7.55. It is the responsibility of the attorney to arrange for publication. The Clerk does not have this responsibility.

D. Defective Notice.

1. Publication Correct but Mailing Defective. The hearing will normally be continued to allow enough time for the required new mailing.

2. Mailing Correct but Publication Defective. The matter must be continued or taken off calendar and a new notice must be given by publication and mailing.

E. Original Petition Off Calendar. If the original petition is taken off calendar or an amended petition for probate is filed, a new notice must be published and mailed. A new proposed order must also be submitted.

F. Notice Under Certain Circumstances.

1. Successor Representative. On a petition for appointment of a successor personal representative and for Letters Testamentary or Letters of Administration with the Will Annexed where the will has previously been admitted to probate, no publication of the notice is required. Notice shall be given in the manner provided in Probate Code §8100 et seq. The proper form of notice is the Notice of Petition to Administer Estate.

2. Special Administrators. At a hearing on a contested petition for probate, the Court may appoint a Special Administrator without the submission of a separate petition.

G. Declaration of Real Property. All petitions for probate of will or letters of administration must be accompanied by a form declaration of real property.

14.33 Proof of Wills

A. In uncontested matters, both witnessed and holographic wills may be proved by declaration without the need for testimony in open court.

B. Where more than one testamentary instrument is offered for probate, each instrument must be proved by a separate declaration.

14.34 Lost Wills

Petitions for probate of lost wills must clearly state on their face that the will is lost and both the published and mailed notice must so state. In those cases where there is no copy of the will, the petition for probate must include a written statement of the testamentary words or their substance. Probate Code §8223. Evidence will be required to overcome the presumption of revocation. Probate Code §6124.

14.35 Wills with Interlineations or Deletions

Where the will offered for probate contains alterations by interlineation or deletion on the face, petitioner must obtain court determination of entitlement before final distribution.

14.36 Proving Foreign Wills

A petition to probate a foreign will must have attached to it a certified copy of the will and the order or decree admitting it to probate outside of this jurisdiction. If the will has been admitted to probate in the United States, the copies referred to need be certified only as correct copies of the Clerk of the Court where admitted. For wills admitted outside the United States, attorneys should refer to the form of certificate acceptable to the Court (the Apostille) discussed in the section entitled "Convention Abolishing the Requirement of Legalization for Foreign Documents" in the Martindale Hubbell law directory.

14.37 Duplicate Wills

If duplicate wills were executed, both documents must be offered for probate despite language in the will to the contrary.

14.38 Renunciations, Declinations and Consents to Act

A written renunciation should be filed by or on behalf of a nominated executor who does not desire to act. Similarly, a written declination should be filed by or on behalf of an individual who is entitled to priority for issuance of letters of administration but does not desire to act. If the necessary renunciation or declination is not filed, the petition should indicate the reason. Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal representative must be filed for each proposed personal representative.

14.39 Receipt of Statement of Duties and Liabilities of Personal Representative

Before Letters are issued, the personal representative, other than a bank or trust company, shall file an acknowledgment of receipt of a statement of duties and liabilities of the office. Probate Code §8404. San Francisco does not require the personal representative's Social Security or driver's license numbers.

14.40 Hearing Within 30 Days

A written declaration must be filed with the petition for probate if it is requested that the petition be set for a day more than thirty (30) days from the date of filing.

14.41 Amount of Bond for Personal Representative

When full independent powers are requested, bond shall be set pursuant to Probate Code §8482. If the petition for appointment of a personal representative does not show the estimated amount to be protected, a declaration setting forth this information must be filed.

14.42 When Bond of Personal Representative Not Required

Ordinarily, when the verified petition for probate so requests, unless the will requires bond, no bond will be required of the personal representative where the petitioner is the sole beneficiary or, if the will is silent regarding bond, all beneficiaries of the estate waive bond. In an intestate estate, bond will be required unless the proposed personal representative is the sole heir or all heirs waive bond. Where appropriate, counsel should file a declaration to assist the Court. However, the Court in its discretion may require a bond in either of these circumstances.

14.43 Nonresident Personal Representatives

A proposed nonresident personal representative will be required to post a bond to protect California creditors, even if the will waives, or all heirs waive, bond. A declaration or attachment to the petition setting forth in detail the anticipated liabilities of the decedent and claims against the estate will be used by the Court to determine the amount of the bond, but in no event will the bond be less than $10,000.

14.44 Bond of Special Administrators

In the case of ex parte appointments of special administrators, the Court will usually require a bond even if the will waives bond and the beneficiaries or heirs waive bond. Probate Code §8481(b).

14.45 Reducing Bond Through Use of Blocked Accounts

When the Court allows a blocked account, a Judicial Council form Receipt and Acknowledgment of Order for the Deposit of Money Into Blocked Account (MC-356) must be filed.

A. Before Issuance of Letters. Because of the difficulties of monitoring the issuance of Letters based on orders requiring blocked accounts, the Court discourages the use of blocked accounts on orders for probate and for appointment of a conservator.

B. After Appointment. Bonds may be reduced at any time after appointment by a petition and order reducing bond, together with a receipt of a depository showing that assets in the amount of the requested reduction have been so deposited in a blocked account. Such a petition must set forth the assets remaining in the estate, after excluding those held by the depository, and it must appear that the reduced bond adequately covers the amount to be protected.

C. Direct Transmittal to Depository. If the assets to be deposited are in the possession of a bank, savings and loan association or trust company other than the named depository, the order should direct the entity in possession to deliver such assets directly to the named depository and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary. (Fin. Code §765.)

D. Withdrawals or Releases from Depository. A Judicial Council form Order for Withdrawal of Funds from Blocked Account (MC-358) may be obtained ex parte. The Petition for Withdrawal of Funds From Blocked Account (MC-357) should set forth the approximate bond, if any, and the purpose for which the withdrawal is being made. The order may provide for funds to be paid directly to a taxing authority or beneficiary or other person entitled thereto.

14.46 Bond Modification

A. See CRC, Rule 7.204. It is the duty of the fiduciary or the fiduciary's attorney, upon becoming aware that the bond is insufficient (e.g., on filing of an inventory or submitting an accounting), to apply immediately for an order increasing the bond. Such application may be made ex parte. An accounting will not be approved until the additional bond is on file.

B. When the bond of a fiduciary must be increased, the Court favors filing of an additional bond rather than a substitute bond. When the fiduciary's bond should be decreased, the Court favors using an order reducing the liability on the existing bond rather than a substitute bond. Reduction or cancellation of the bond will not be allowed nunc pro tunc. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the Court to determine the amount of the increase.

C. Where a decrease in bond is sought because distribution has been made, copies of receipts evidencing the distribution should be presented with the petition.

14.47 Bond of Successor Trustee

The Court will require a bond of all successor trustees not named in the trust instrument unless all beneficiaries and remainder persons waive bond. The assets on hand must be listed with the fair market value to allow the Court to set the bond.

14.48 Bonds of Co-Fiduciaries

See CRC, Rules 7.202 and 7.203. The names of all fiduciaries must be on the bond. Upon resignation or removal of one fiduciary, a new bond must issue in the name or names of the remaining fiduciaries.

14.49 Bond on Change in Capacity of Fiduciary

When the Court requires a bond of a special administrator or a temporary conservator and a bond is required on that same person's permanent appointment, a new bond is required.

14.50 Request for Appointment of Referee

To obtain appointment of a referee, the San Francisco form, Request for Appointment of Referee, together with the original and one copy of the proposed Order Appointing Referee, on which the name of the referee has been left blank, must be submitted to the Clerk of the Court together with a stamped, self addressed return envelope. (San Francisco does not use the Order for Probate to appoint a referee.) Local forms are available online at www.sfgov.org/courts.

14.51 Preparing Inventory and Appraisal

The Inventory and Appraisal for a decedent's estate is due within four months after Letters are issued. The California Probate Referee's Association has published a pamphlet, Probate Referee's Procedures Guide, describing its suggested form for listing various inventory assets as well as its opinion as to whether particular assets should be listed on attachment 1 or 2. Although not an official publication, this pamphlet is a good reference.

14.52 Sufficiency of Bond

If there is a bond in force, the Inventory and Appraisal must disclose on its face whether the amount thereof is sufficient or insufficient.

14.53 Waiver of Appointment of Referee

The appointment of a probate referee may be waived only for "good cause" under Probate Code §8903, et seq. The decision whether good cause exists will be made by the Court on the basis of the facts set forth in the petition. The petition, including a copy of the proposed Inventory and Appraisal, and notice of hearing shall be served on all persons who are entitled to notice pursuant to Probate Code §8903. The petition must state the source of the values included in the Inventory and Appraisal. Waivers of appointment are not favored and are not routinely granted.

14.54 Notice to Creditors

A. Notice to Unknown Creditors. Notice must be published in accordance with Probate Code §§8100-8125.

B. Notice to Known or Reasonably Ascertainable Creditors. If a personal representative has knowledge of a creditor of the decedent, the personal representative must give notice of administration of the estate to the creditor. Probate Code §9050(a). (Judicial Council Form DE-157.) The notice must be given as provided in Probate Code §1215 in addition to the publication of the notice under Probate Code §8120. A personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate. Probate Code §9050.

14.55 Nature and Form of Claims

A. Claim Versus Expense of Administration. The Court will not approve claims which represent obligations of the estate arising after the death of the decedent (except reasonable funeral expense). Such expenses are properly expenses of administration, not creditors claims and should be included for approval in the account.

B. Form of Claims. Creditors claims should be submitted on Judicial Council forms; however, the creditors claims will be liberally construed in favor of their sufficiency if the content and format are in substantial compliance with the Probate Code. Satisfactory vouchers or proof of claim shall be attached.

C. Claims when personal representative has IAEA powers. See CRC, Rule 7.402.

14.56 Claims Filed with Clerk and Mailed to Personal Representative

Creditors must file their claims with the Clerk of the Court and mail a copy to the personal representative (Probate Code §9150). The disposition of such claims must be reported to the Court prior to any distribution.

14.57 Payment of Interest on Funeral and Interment Claims

When interest has been paid in connection with the delayed payment of a claim for reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which the credit for such payment has been taken, setting forth reasons for the delay in payment. The personal representative may be surcharged the amount of the interest where the delay in payment of the claim is not justified.

14.58 Claims of Personal Representative and Attorneys

A. Procedure. A creditor's claim of the personal representative or attorney should be noted as such. Such a claim must be processed as provided in Probate Code §9252, notwithstanding authority to act under IAEA. When there is more than one personal representative, a creditor's claim submitted by one of the personal representatives must be approved by the other(s) before submittal to the Court for approval.

B. Ex Parte Approval of Claims. Creditors claims of the personal representative or attorney for less than $2,500 may be submitted on an ex parte basis pursuant to Probate Code §9252(a). Creditors claims of personal representatives or the attorney for over $2,500 will not be approved by the Court until either a hearing has been held or written consent of the beneficiaries is on file. Such hearing should be held as set forth in Probate Code §9252(a) and notice thereof given to all persons entitled thereto including all residuary beneficiaries, together with a copy of the claim.

14.59 Waiver of Formal Defects in Claim Form

A personal representative may waive formal defects if a creditor makes a written demand for payment within four months after the date letters are first issued and pays the claim within thirty (30) days after the four-month period if the debt was justly due, paid in good faith and the estate is solvent. Probate Code §9154.

14.60 Judicial Approval

Judicial approval of sales or exchanges of real or personal property is not required in estates being administered pursuant to the IAEA with full authority. Confirmation is still required in other estates and a personal representative acting with full IAEA may return a sale for confirmation at his or her discretion.

14.61 Time and Place of Hearing

Hearings on confirmation of sales of both real and personal property are held at 9:00 a.m. every Monday, Tuesday and Wednesday, and are the first matters called.

14.62 Exclusive Listing for Sale of Property

See CRC, Rule 7.453. Probate Code §10538 is authority for a personal representative acting under IAEA to enter into an exclusive agreement to sell real property without prior Court approval. If Court confirmation is sought, either because of limited IAEA or pursuant to the agreement of sale, at the hearing on the confirmation of the sale, the Court will determine the total commission (without regard to the terms of the exclusive agreement). If an exclusive listing for sale of real property is sought by a personal representative not acting under IAEA, an application for authority to enter into an exclusive listing may be presented ex parte. A copy of the agreement for the exclusive listing must be attached. The petition must set forth the agent/broker's name, his or her experience with sales of real property in the area of the subject property and a description of the specific properties to be sold.

14.63 Tangible Personal Property (Probate Code §10250, et seq.)

A. Necessity for Appraisal. For estates subject to the IAEA, sales of personal property may be made without Court approval. In all other cases, the sale of tangible personal property will ordinarily not be approved unless the property has been appraised. For this purpose, a partial inventory and appraisal may be obtained from the appointed probate referee.

B. Commissions. Commissions on sales of tangible personal property will be allowed only to individuals holding a license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in Court, a commission may be allowed to the successful broker and, if the original bid was subject to the commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the Court's discretion.

14.64 Securities

Where a personal representative is proceeding under Probate Code §10200, the petition for authority to sell must set forth a minimum sales price as to all securities except those listed on an exchange. The minimum price must be a recent market quotation from the over the counter market, or, if there is no recent market quotation available or the securities are closely held, the petition must set forth the basis for fixing the minimum sales price.

14.65 Condominiums, Community or Cooperative Apartments

A. A condominium or cooperative apartment is an interest in real property and must be sold as such, unless it is held as a limited partnership. (Civil Code §783)

B. The sale of a cooperative apartment will not be confirmed subject to the original (returned) purchaser later obtaining the acceptance of a Board of Directors or other governing body. If there is an overbid, the Court, at the request of the personal representative, will then continue the matter for the purpose of obtaining acceptance. If the personal representative does not wish to continue the matter for this purpose, the Court will not accept the overbid.

14.66 Publication of Notice of Intention to Sell Real Property

A. Procedure. Notice of intention to sell real property must be published pursuant to Government Code §6063(a) in decedents' estates except for estates in which there is a power of sale in the will. Publication must be in a newspaper published in the county in which the real property lies.

B. Contents and Purpose of Notice. The notice should include the date and place of sale (not the date of the confirmation hearing). The published notice is a solicitation for offers. No offer can be accepted until the date on or after the time for making bids expires. The notice should contain the street address or other common designation of the property, or if there is none, the legal description of the property. If an exclusive listing has been given, the notice should so state. If the property is to be sold subject to an encumbrance, the notice should so state.

If the property is to be sold for cash only, the notice must so state. If the estate would prefer all cash but will accept part cash and part credit, the notice should include the following language: "All cash, or part cash and part credit, the terms and conditions of credit as are acceptable to the fiduciary and the Court." See Probate Code §10300 et seq.

C. Effect of Notice. Any offer accepted and returned to Court for confirmation cannot be at variance with the terms of the sale contained in the notice.

14.67 Return of Private Sale for Court Confirmation

A. Appraisal and Reappraisal. In order for a private sale to be confirmed, there must be on file an appraisal of the property and a reappraisal for purposes of sale if the decedent's date of death or guardian's or conservator's appointment occurred more than one year before the date of the confirmation hearing. The appraisal and reappraisal should be on file PRIOR to the hearing date on the return of sale.

B. Market Exposure of the Property. Whenever it is brought to the attention of the Court that the fiduciary has denied bona fide prospective buyers or their brokers a reasonable opportunity to inspect the property, the returned sale will not be confirmed, and the sale will be continued to allow inspection.

C. Second Deeds of Trust. The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

D. Hearing on Return of Sale and Overbids. Counsel must be prepared to state the minimum necessary overbid, computed at

the rate of ten percent (10%) of the first $10,000, and five percent (5%) on the balance of the sale price. Counsel should inform the original bidder and his or her agent of the time and place of hearing and advise that they be in court for the hearing.

If the sale returned to the Court for confirmation is for cash and the higher offer made to the Court pursuant to Probate Code §10311 is upon credit, the offer shall be considered only if the personal representative prior to the confirmation of sale informs the Court in person or by counsel that the offer is acceptable.

If the sale returned to the Court for confirmation is upon credit and a higher offer is made for either cash or credit, whether on the same or different credit terms, the offer shall be considered only if the personal representative prior to the confirmation informs the Court in person or by counsel that the offer is acceptable.

E. Earnest Money Deposit by Increase Bidder. When a sale is confirmed to an overbidder, the overbidder must submit at the time of the hearing a certified or cashier's check in the amount of ten percent (10%) of the overbid amount.

F. Overbid Form. The Courtroom Clerk will give counsel a form to be completed on the overbid. This form is to be returned to the Clerk before the end of that morning's probate hearings.

G. Bond. The petition for confirmation of sale of real estate should set forth the amount of the bond in force at the time of the sale and the amount of property in the estate which should be covered by bond. If additional bond is required after confirmation of sale of real property, the petitioner should provide sufficient information for the Court to determine the net proceeds of sale and the amount of the required additional bond. If no additional bond is required or if bond is waived, that fact should be alleged. Blocked accounts will not be accepted in lieu of the additional bond required.

H. Absence of Attorney for Estate at Confirmation Hearing. If someone is present who wishes to overbid and the estate's attorney is absent from the hearing, the hearing will be continued, except where the fiduciary is present and requests that the sale proceed without the attorney.

I. Continuances. Sale confirmations will be continued only under exceptional circumstances and the motion for continuance must be made in open court at the time set for the sale.

J. Partial Interest. Where the estate has a partial interest in real property, all information in the petition should refer ONLY to the partial interest, including the overbid amount. If the additional interest is also being sold, the total bid necessary should be announced in open court.

14.68 Broker's Commissions (Probate Code §§10161-10166)

A. Improved Property. The Court will ordinarily allow a broker's commission not to exceed five percent (5%) of the sale price. It is understood that commissions are negotiable and the parties may agree to a lesser percentage.

B. Unimproved Property. The Court will ordinarily allow a broker's commission not to exceed ten percent (10%) of the sale price. In each instance, the Court will determine what is unimproved property.

C. Order Must Show Commission Allocation. The order confirming sale must show the total commissions allowed and any allocation agreed on between the brokers. (For examples of allocation of commissions, see appendix B.)

D. Commission Rates of Property Sites Will Apply. Where the property is not located in San Francisco County, the Court will allow commissions based on the San Francisco Probate Department schedules unless it is shown that a larger commission would be allowed based on the schedule in effect in the Probate Department of the county in which the property is located.

E. Commissions in Excess of Schedules. A commission exceeding the normal schedule will be allowed only if the Court determines that there are special circumstances and that it is reasonable. The written agreement of the affected beneficiaries to the allowance of such commission should be obtained and presented at the hearing.

F. Broker Bidding for Own Account Not Entitled to a Commission. A broker bidding for his own account is not entitled to receive or share in a commission. Estate of Toy (1977) 72 Cal.App.3d 392.

14.69 Broker's Commissions in Overbid Situations

A. Only Original Bidder Represented by Broker. When the original bidder is represented by a broker and the successful overbidder is not, the original broker is allowed a full commission on the amount of the original bid returned. Probate Code §10164(b).

B. Where Overbidder Represented by Broker. The overbidder's broker receives a full commission on the overbid price

confirmed by the Court, reduced by one half (½) the commission on the original bid, which latter commission will be split equally between the original bidder's broker and any listing broker involved in the sale. Over bidder's commission is limited by Probate Code §10162 to half the difference between the successful overbid and the returned bid if the original bidder is not represented by a broker.

C. Original Bidder as Overbidder. Once a net bid has been overbid in court, the original bidder may elect to be represented by a broker in further bidding.

14.70 Accounts

All accounts filed in probate proceedings, which include guardianship, conservatorship, and trust accounts, must be typewritten and must conform to Probate Code §1060 et seq. An account must be accompanied by a report of administration. The account must state the period covered by the account. A personal representative's account must begin with the date of death of the decedent.

14.71 Summary of Account Form

The account must contain a summary in the following form:

SUMMARY OF ACCOUNT	
CHARGES	
Amount of Inventory and Appraisal (or if subsequent account, amount chargeable from previous account)	$_____
Receipts during account period other than Principal (Schedule A)	$_____
Gains on Sales (Schedule B)	$_____
TOTAL CHARGES:	$_____
CREDITS	
Disbursements during account period (Schedule C)	$_____
Losses on Sales (Schedule D)	$_____
Other Credits (Schedule E), e.g., property distributed, homestead or other property set apart)	$_____
Property on Hand (Schedule F)	$_____
TOTAL CREDITS:	$_____

14.72 Contents of Account

Court accountings are cash, not accrual, basis. The summary must be supported by detailed schedules. The schedules of receipts and disbursements must show the nature or purpose of each item, the source of the receipt or the name of the payee, and the date thereof. Individual fiduciaries may not include transfers between accounts as they are not proper receipts or disbursements and should NOT be included. The schedule of property on hand must describe each item and the carrying value with a separate schedule setting forth the appraised value.

14.73 Reporting Income and Principal

When any part of the estate is to be distributed to a trustee of a testamentary trust, and the accumulated net income is to be paid over by the trustee to the trust beneficiaries, the account must allocate receipts and disbursements between principal and income and the amount of net income set forth.

14.74 Verification of Cash Balances

The ending balance of cash in interim and final accounts filed by individual fiduciaries must be verified. Verification is made by original bank or brokerage statements or original bank letters signed by a bank officer with the authority to sign, showing the vesting of the account, and the date and the amount of the balance. Photocopies are not acceptable. Balances shown in the account must be reconciled to the letters or statements which must be attached as exhibits to the account.

Private professional or licensed guardians, conservators, or trustees of trusts related to conservatorships or funded by Court order, as defined by CRC, Rule 7.903(a), shall continue to file only the original account statements showing the beginning balance of the first account and the ending balance of all accounts and lodge all other original account statements by submitting the statements to Room 202 of the Civic Center Courthouse in an envelope clearly marked on the outside with the case number, name of the conservatorship, guardianship, or trust, and the date the matter is on calendar. A stamped, self-addressed envelope must be included with the lodged documents which will be returned to the fiduciary when the court's determination of the guardian's,

conservator's, or trustee's account has become final.

14.75 Allegations re Sufficiency of Bond

Sufficiency of bond must be addressed in all interim accounts. Where bond has been posted, there must be an allegation as to the total bond posted, the fair market value of personal property on hand at the close of the account period plus an estimated annual gross income from the real and personal property and any additional bond thereby required. (Probate Code §8482)

14.76 Trustee's First Account

The starting balance of a testamentary trustee's first account must conform to the trustee's receipt(s) filed on distribution of the assets of the decedent's probate estate. The petition for settlement of a trustee's account must include the names of beneficiaries and remainder persons and set forth the trust provisions for distribution of principal and income.

14.77 Waiver of Accounting on Final Distribution

A. When Permissible. Waiver of accounting is permitted under Probate Code §10954 when each person entitled to distribution files either a written waiver of accounting or a written acknowledgment that the distributee has already received that to which he/she is entitled. A beneficiary of a specific cash bequest or nonincome producing assets ordinarily need not execute a waiver of the accounting.

B. Effect of the Waiver. See CRC, Rule 7.550.

C. Waiver by Trustee. A testamentary trustee who waives the accounting of the personal representative must have filed a consent to act as trustee. (Probate Code §10954(b)(4).) Even though there is a waiver of accounting by the trustee, if the net probate income is to be paid by the trustee to the trust beneficiaries, the net probate income must be specified.

14.78 Specifically Devised Realty

Unless waived, a separate accounting for specifically devised real property is required. Such account shall set forth the income received from such real property and expenses allocable to it (e.g., taxes, maintenance, repairs, insurance, debt service). For apportionment of income and expenses see Probate Code §12002 (c)(d).

14.79 Reports and Petitions for Distribution

A. Preliminary Distribution Under Probate Code §11620. In addition to the requirements contained elsewhere in this chapter, the petition for preliminary distribution must state the approximate value of the property remaining in the estate after the proposed distribution and an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities. An inventory and appraisal which includes the property to be distributed must be on file.

B. Ex Parte Petition for Preliminary Distribution Under Probate Code §11623. Absent an emergency, preliminary distributions should be set for hearing. Probate Code §11623 provides for an ex parte petition for preliminary distribution. The urgency justifying such an ex parte application must be set forth.

C. Allegation re Character of Assets. In all cases where the character of the property may affect distribution, whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property.

D. Agreements for Distribution of Assets and Disclaimers. If distribution is to be other than according to the terms of the Will or the laws of intestate succession, there must be a written agreement on file executed under penalty of perjury and signed by all parties affected by the distribution. If there is a disclaimer on file, property will be distributed in accordance with Probate Code §282.

E. Assignment of Assets. (Probate Code §11604) If distribution is to be made to an assignee of an heir or devisee, the original assignment and the terms thereof must be on file.

F. Distribution to Persons under Conservatorship or Guardianship. The decree should provide for distribution of the property to the minor or the conservatee rather than to the guardian or conservator, but must provide that actual payment or delivery be made to the guardian or conservator.

G. Distribution to Minors.

1. Where delivery of the assets is to be made to the minor's parent pursuant to Probate Code §3401, the declaration by the

parent complying with the provisions of that section must be on file before the hearing date.

2. Where a blocked account is to be used, the receipt and agreement of the depository must be filed and the decree of distribution shall so provide. The decree shall direct distribution of the minor's funds to a specific depository, including its location, in the name of the minor and shall state that the funds cannot be withdrawn without Court order.

H. Distribution to Trustee. If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. A written declination should be filed by or on behalf of the trustee who does not choose to act. The decree must contain the terms of the testamentary trust.

I. Distribution to Representative of Deceased Heir or Beneficiary. When an heir or beneficiary dies during the administration of an estate and survives any survival period stated in the will, the decree should provide for distribution to the named personal representative of the estate of the heir or beneficiary (Probate Code §§11801-11802) or, where applicable, to the person(s) entitled thereto under Probate Code §13100 or 13500. Counsel must file a copy of Letters certified within 60 days, the original 13100 affidavit or a certified copy of the Spousal Property Order before the hearing date.

J. Distribution to Intestate Heirs. The relationship of heirs who take by intestacy should be sufficiently described in the petition for distribution to permit the Court to determine whether the laws of intestate succession have been properly applied. If an heir takes by right of representation, the petition must indicate the parentage and the approximate date of the parent's death. Blood relationships and their degrees of kindred are shown in Appendix A.

K. Interest on General Pecuniary Legacies. The Court will strictly enforce the policy set forth in Probate Code §12003 and will order payment of interest at the statutory rate on all general pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will. Probate Code §12001 sets the rate of interest. Attorneys are responsible for determining the correct rate. The order must state the date from which interest will be paid and that interest runs to the date of distribution.

L. Requirements re Petition for Final Distribution.

1. Allegations re Creditors' Claims. The petition for final distribution (whether or not on waiver of accounting and whether or not the personal representative is acting under IAEA) must list all creditors' claims presented to the personal representative (even if not filed with the Court) and indicate the disposition of each claim, the name of the claimant and the amount paid. If any claim has been rejected, the date of service of notice of rejection must be stated, as well as its disposition, whether by lawsuit or otherwise. The petition must also state that the time for filing claims has expired and that all known or reasonably ascertainable creditors of the estate described in Probate Code §9050 received notice described in Probate Code §9052 or are within the class of creditors described in Probate Code §9054. This information must be set forth in the petition for final distribution even though it may have been presented to the Court in whole or in part in prior accountings or petitions for distribution.

2. Allegations Relating to Independent Acts. The petition must list and describe all independent acts taken without prior Court approval and if notice of the proposed action was required, the petition must contain an allegation that the notice period for the advice of proposed action was met or waived and no objections were received. The originals of the advice of proposed actions with attached declarations of mailing must be available but need not be filed with the Court. If certain acts have been properly reported in a prior petition for distribution (which was approved) they need not be repeated.

3. Payment of Taxes. The petition for final distribution must address the question of the source of the payment of the federal estate tax and California estate tax, if any. If the will has a clause directing the payment of the taxes out of the residue of the estate, this should be alleged. If, on the other hand, there is no tax clause or there is a tax clause which does not direct the source of the payment, the amounts required to be prorated or charged must be stated. The final account must show the computation and the order for final distribution must show the proration. The caption of the petition, notice and decree must indicate the death taxes are prorated.

4. Retention of a Reserve. The decree of final distribution must specifically set forth the use that may be made of the retained funds (e.g., income taxes, closing costs, property tax assessments, etc.). The application for final discharge must show the disposition of all amounts held in reserve and receipts must be filed for any distribution.

5. Franchise Tax Board Clearance. On the filings of a final account or report, if the estate exceeds $1,000,000 at the date of death and if $250,000 or more is distributable to nonresident beneficiaries, the certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 must be on file.

6. California Inheritance Tax. In Inheritance Tax Report and Order Fixing Tax must be filed prior to final distribution in estates where the decedent died prior to June 8, 1982.

7. Election of Surviving Spouse to Administer. If the surviving spouse elects to probate assets that are distributable directly to him/her, the surviving spouse must file a statement that he/she has been fully informed about the reasons for a probate (rather than, e.g., a Spousal Property Petition) and the consequences thereof, including potential delay and increased fees.

8. Allegations re Health Care Benefits. The first report of administration of a decedent's estate must contain the allegations required by Probate Code §9202 and 215 and that four months have elapsed since the notice was sent or that no such notice is required. This notice is required if decedent or his/her predeceased spouse received MediCal benefits.

9. In General.

a. A petition for final distribution, whether or not an account is waived, must list assets on hand and list and describe the property to be distributed, either in the body of the petition, or by a schedule in the accounting, or in a separate exhibit incorporated in the petition by reference. Description by reference to the inventory is insufficient. Real property must be described by legal description.

b. The petition for final distribution must state specifically how the estate is to be distributed. A general allegation that distribution is "in accordance with the terms of the will" or "in accordance with the laws of intestate succession" is insufficient.

c. When the petition seeks a non-pro rata distribution, it must show the computation on which the proposed distribution is based. Consents of interested beneficiaries must be filed.

d. Whether or not an accounting has been waived, the decree of distribution must set forth specifically the manner in which the estate is to be distributed by showing the distributee's name and a description of the property, including the legal description of real property, and the amount of cash (as of a date certain) to be distributed. This must be in the body of the decree. Mere reference to allegations in the petition is insufficient and not acceptable to the Court. Schedules attached to the decree are also unacceptable.

e. The decree should provide that the savings institution or other depository holding blocked funds belonging to the estate draw checks payable to the named distributees. Funds held in blocked accounts in lieu of bond will not be released to the personal representative for distribution.

f. Receipts for any preliminary distribution must be on file prior to the approval of final distribution.

14.80 Family Allowance (Probate Code §§ 6540-6545)

A. Necessary Allegations of Petition. All petitions for family allowance must state facts to show that the allowance prayed for is necessary and reasonable, including:

1. the nature and separate or community character of the probate estate and whether or not it is solvent;

2. whether others are entitled to a family allowance;

3. the approximate needs of the applicant, with reference to his or her standard of living; and

4. the applicant's income from other sources.

B. Duration of Family Allowance. All orders will limit family allowance to a definite period of time. If the order is on an ex parte petition, family allowance will normally not be granted for a period exceeding six months.

C. Probate Code §6540(a). Before an inventory is filed, an order for family allowance under Probate Code §6540(a) may be made or modified ex parte or on noticed hearing; after an inventory is filed, such an order may be modified only on noticed hearing, as provided by Probate Code §6541(b).

D. Probate Code §6540(b). An order for a family allowance under Probate Code §6540(b) may be made or modified only on noticed hearing as provided by Probate Code §6541(c).

E. Income and Expense Declaration. If a petition for family allowance is contested, the petitioner must file an income and expense declaration prior to the hearing. (Judicial Council Form FL-150.)

14.81 Borrowing Money (Probate Code §§9800-9807)

A. Inventory Must Show Security. If the loan is to be secured, an inventory describing the security must be on file prior to the hearing.

B. Bond Requirements. The petition under Probate Code §9802 must state whether the personal representative is serving with or without bond. If with bond, the Court must be advised in the petition, by supplemental declarations filed before the hearing or by testimony at the hearing as to the necessity for an increase in bond.

14.82 Operating a Business (Probate Code §9760)

The petition must show the advantage to the estate and the benefit to the interested persons of the order requested. Notice of the hearing must be given as provided in Probate Code §1220.

14.83 Determining Title to Real Property or Personal Property (Probate Code §850)

The Court requires that all notices of hearing given under Probate Code §851 must contain a description of the property sufficient to give adequate notice to any party who might be interested in the property, including with respect to real property, the street address or, if none, an indication of its location.

14.84 Substitution or Withdrawal of Attorney

If an attorney wishes to withdraw from a probate proceeding as the attorney of record, the attorney may do so by filing a noticed motion in the probate department or by filing a substitution of attorneys. Substitution of the personal representative or the conservator or guardian, in pro per, will require a noticed motion and appearance. Notice to a bonding company, if any, is required.

14.85 Petition for Instructions

A petition for instructions is only available when no other different procedure is provided by statute. For example, the Court will not determine how a will should be interpreted or the manner in which an estate should be distributed on a petition for instructions. Such direction can only be obtained by a petition for distribution or by a petition for determination of persons entitled to distribution, Probate Code §11600 et seq., and §11700 et seq.

14.86 Obtaining Final Discharge

Counsel or self-represented parties must submit Judicial Council Form DE-295 with endorsed filed copies of receipts attached. In the case of real property, the personal representative must file a statement that identifies the date and place or location of the recording of the decree of final distribution and other appropriate recording information. If funds have been retained in reserve, the application for final discharge must show the disposition of all funds, and receipts. The Court at its discretion may require a supplemental account of the reserve. The order portion should be completed in full except for the date and name of the Judge.

14.87 Proceedings to Establish Fact of Death (Probate Code §§200-204)

A. Filing Under Name of Decedent. A petition to establish the fact of death must be filed in the name of the deceased person whose interest is to be terminated.

B. Separate Petition Preferred. Although Probate Code §202(b) authorizes a petition to establish the fact of death to be included in a verified petition for probate of will or for letters of administration, attorneys are requested to file the petition as a separate petition.

C. Description of Property. If the property affected is realty, a copy of the document showing the decedent's interest must be attached to the petition and incorporated therein, or the verified petition must set forth the entire instrument vesting title, including the recordation data. If the property affected is personalty, the location and the description of the property and the decedent's interest therein must be set forth with particularity.

D. Death Certificate. A certified copy of the death certificate must be filed with the petition.

E. Attorney's Fees. There is no provision in the Probate Code for allowance of attorney's fees in proceedings to establish the fact of death. The attorney should make fee arrangements directly with the client. If a surviving joint tenant failed during his or her lifetime to establish the fact of death of a previously deceased joint tenant, an extraordinary fee may be awarded in the probate proceeding involving the surviving joint tenant for those services performed after the death of the surviving joint tenant.

14.88 Temporary Guardianships and Conservatorships

A. Grounds. A temporary guardianship or conservatorship will not be granted without a showing of good cause. The petition must set forth facts showing the emergency or urgent nature of the request.

B. Filing Petitions and Setting on Ex Parte Calendar. Ex parte petitions for appointment of temporary conservators must be set at least seven (7) court days in the future. Ex parte petition for appointment of temporary guardians must be set at least five (5) calendar days in the future. Petitioners must obtain a hearing date and time by calling 415-551-3659.

A separate petition for appointment of a general conservator or guardian must first be on file and a hearing date assigned before a petition for appointment of temporary conservator or guardian will be considered.

Endorsed filed copies of both the general and temporary petitions must be delivered to the Probate Department at least seven (7) court days before the scheduled hearing date for temporary conservatorship petitions and at least five (5) calendar days before the scheduled hearing date for temporary guardianship petitions.

C. Notice.

1. Temporary Conservatorships. Unless the Court for good cause otherwise orders, at least five (5) court days before the hearing on the appointment of temporary conservator, the petitioner must give notice by

a. Personally serving notice of hearing and a copy of the petition on the proposed conservatee, and

b. Mailing notice of hearing and a copy of the petition to the persons required to be named in the petition for appointment of conservator. The proofs of service and a declaration regarding notice must be filed and endorsed filed copies presented to the Probate secretary in Room 202 at least three (3) court days before the temporary conservatorship hearing.

2. Temporary Guardianships. Unless the court for good cause otherwise orders, at least five (5) days before the hearing on the appointment of a temporary guardian, the petitioner must

a. Personally serve notice of hearing and a copy of the petition on the proposed ward, if the proposed ward is 12 years of age or older; to the parents of the proposed ward; and to anyone having a valid visitation order with the proposed ward, and

b. Give 24 hours' notice by telephone or fax to relatives within the second degree of the proposed ward. A declaration regarding notice to relatives within the second degree must be filed and presented to the Probate secretary in Room 202 before the ex parte hearing. The proofs of service of notice to the proposed ward (if the proposed ward is 12 years of age or older) to the parents of the proposed ward, and to anyone having a valid visitation order with the proposed ward must be filed and endorsed filed copies presented to the Probate secretary in Room 202 at least three (3) days before the temporary guardianship hearing.

D. Appearance at Hearing. The Public Guardian need not appear at the hearing of an uncontested ex parte petition for appointment of the Public Guardian as temporary guardian or conservator. In all other cases, the petitioner, proposed temporary conservator or guardian, and counsel, if any, must appear at the hearing. The proposed temporary conservatee must appear unless the court investigator's report or a Capacity Declaration, Form GC-335, excuses the proposed temporary conservatee's appearance under Probate Code §2250.4. In guardianship proceedings, the minor must be present.

E. Bond. A full bond will normally be imposed upon a temporary guardian or conservator of the estate, pursuant to Probate Code §2320(c) and CRC, Rule 7.207(c). If a lesser amount is requested, good cause must be shown in the petition.

F. Powers of Temporary Guardians and Conservators. Temporary guardians or conservators have the same powers as regular guardians or conservators with the following exceptions:

1. Sales. Temporary guardians or conservators may not sell any property including securities, vehicles, personal property, or real property.

2. Change of residence. Temporary guardians or conservators may change the residence of the ward or conservatee only with Court authorization except in an emergency or if there is a need for an acute hospitalization.

G. Special Powers. Special powers are not favored in temporary guardianships or conservatorships. If special powers or other special orders are sought, they must be specified in the petition and supported by factual allegations constituting good cause. In any case involving a special medically related power, a physician's declaration should be presented with the petition in accordance with LRSF Rule 14.90.G.1.b.

H. Length of Appointment. A temporary guardian will not be appointed for a period exceeding thirty (30) days. An extension can be ordered by the Court for good cause. A temporary conservator will be appointed only pending the hearing on the petition for the appointment of the conservator.

I. Copies. All filings regarding guardianships and conservatorships must be accompanied by a copy designated for the Court Investigation Unit of the Probate Department.

14.89 Guardianship

A. Notice.

1. On Petition for Appointment of Guardian. Notice of petition must comply with Probate Code §§1510-1511. In situations where an order dispensing with notice is sought on the ground that a relative within the second degree cannot be found with reasonable diligence, and no other notice is required under Probate Code §1511, the Court requires a declaration stating specifically what efforts were made to locate the relatives.

2. Screening. When a petition for guardianship of person is filed, a copy of the petition and other documents must be given to the San Francisco HSA and to the Director of Social Services at the Director's Office in Sacramento pursuant to Probate Code §1516 and 1542. This will enable the agencies to screen the proposed guardian for neglect or abuse of children. The following documents should be provided to the San Francisco HSA within a week of the filing of the documents at the Superior Court. The following documents are required by the Probate Code and the HSA:

a. Notice of Hearing

b. Petition for Guardianship

c. The order and Letters of Temporary Guardianship, if one was granted

d. The Declaration of the Proposed Guardian

e. The Declaration under the Uniform Child Custody Jurisdiction Act

f. Any consents, nominations, or waivers of notice and consent

g. A cover letter which provides the following information for the proposed guardian and each other adult living in the household(s) of the proposed guardian(s):

(1) The complete name of each adult

(2) The date of birth of each adult

(3) The social security number of each adult

(4) The driver's license number or California identification number of each adult

h. The documents should be sent to:

Theresa McGovern, N120

Family and Children's Services

HSA

Box 7988

San Francisco, CA 94120-7988

In cases where a natural parent is seeking to be appointed guardian of a minor, the screening by the HSA will not be required.

3. Other Court Proceedings. If a minor is involved in any other court proceeding, i.e., Juvenile Court for dependency or delinquency, litigation or Family Court Services, past or present, it must be stated in the petition for guardianship. The dates and case numbers of those actions must be included.

4. Appearance of Proposed Ward at Hearing for Appointment of Guardian. An appearance by the proposed ward is required.

B. Investigative Reports. Unless waived by the Court, an investigative report may be given to the Court prior to appointment of a guardian of the person and/or estate pursuant to Probate Code §1513 (a).

In all cases where a non-relative petitions to be appointed guardian, the HSA will perform an investigation including a home visit, and make a report to the Court prior to the hearing date. When the proposed guardian is a relative, a Court Investigator will conduct an investigation pursuant to Probate Code §1513, including a home visit, and provide a report to the Court prior to the

hearing date. Further investigation or mediation will be performed as required by the Court.

C. Review of Guardianships. The Court has a program to use trained, supervised volunteers to assist the Court in reviewing guardianships. Guardians will receive a visit from the Court to discuss the needs and progress of the minor. The Court Visitor will make a report to the Court as to the needs of the minor. Where the guardian is a natural parent, the Court will not require a visit.

D. Information to be Supplied.

1. Required Declaration. The Court requires that a declaration in support of the petition for guardianship of the person be filed with the petition by the proposed guardian. The declaration will become part of the court file which is a public record. The declaration must include the following:

a. The need for guardianship including the specific reasons why the parents are unable to care for the proposed ward, and whether they consent to the guardianship.

b. The proposed guardian's complete legal name, date of birth, education, employment, and state of health.

c. Information if the proposed guardian is presently serving as a guardian in San Francisco County or any other county and, if so, the names of the wards.

d. The complete legal name, date of birth and relationship of all persons residing in the proposed guardian's household.

e. A statement concerning the development of the minor, indicating with whom minor has resided since birth, and any special emotional, psychological, educational or physical needs of the minor and the guardians' ability to provide for such needs.

f. The proposed daycare for the minor, if applicable, and the name, address and telephone number of the minor's school, if any.

g. The housing arrangements of the guardian, indicating whether the minor will have his or her own room or will be sharing a room with another member of the guardian's household, and if so, with whom.

h. The anticipated amount and source of any financial support of the minor. Counsel is reminded that the appointment of a guardian does not relieve the minor's parents of their primary obligation of support.

i. A photocopy of the visa of a minor in the United States on a student visa.

j. Any arrest record of the guardian and each person who will reside in the guardian's home, including the nature of the offense, the date, place, and disposition.

k. Any pending or prior proceedings in Juvenile Court (dependency or delinquency), Family Court, or any other court involving the minor. Any pending proceedings in Juvenile Court (dependency or delinquency) involving any other persons who will be residing in the guardian's home should also be stated. Information required in this section should include the date, place, case numbers, and disposition of the matter(s).

l. Any prior contact by the minor, the guardian, and any persons who will reside in the guardian's home with Child Protective Services or the HSA.

m. The name and telephone number of the physician or medical clinic where the child receives his/her medical care.

n. Information which should be revealed to the Court but which the petitioner wishes to have remain confidential, shall be addressed to the Court Investigator and labeled, "For Confidential Use Only." A Confidential File may be established by the Clerk of Court to contain confidential information filed with the petition for guardianship. Generally confidential files will not be created under any other circumstance.

2. Declaration Under UCCJA. A declaration under the Uniform Child Custody Jurisdictional Act (UCCJA) must be filed with the petition and at any time there is a change of address of the ward. Judicial Council Form GC-120.

E. Inventories and Accounts for Several Wards. When a guardianship of the estate has been instituted for more than one minor, the interests of each minor must be separately stated in the inventory and separate accounting schedules must be presented so that the receipts, disbursements and assets pertaining to each minor's estate are readily ascertainable.

F. Accounts and Reports.

1. In General. The report accompanying each accounting should contain a statement of the age, health and whereabouts of the

ward. In addition, the report should contain an allegation concerning the amount of bond currently in effect and should address the question of the adequacy thereof.

2. Waivers of Accounts. Waivers of final accounts on termination are not favored and the Court will require the ward to be present at the hearing.

3. Calendaring of Inventory and Appraisal and Accounting. All guardianships of estate will be placed on calendar for the filing of the Inventory and Appraisal approximately ninety (90) days after appointment of the guardian. If the Inventory and Appraisal are on calendar, no appearance will be required unless deemed necessary by the Court. The Court will also place the First Account on calendar for one year after appointment. If the accounting is on file, no appearance will be required unless the Court deems it necessary.

4. Status Report. Where there is a guardianship of the person, the Court will require the filing of a Status Report Judicial Council form GC-251 and will set a date for hearing 6 months to one year after appointment of a guardian. If the Status Report is on file by that date, no appearance will be required unless deemed necessary by the Court. The Clerk of the Court will mail a blank form to the guardian to be completed and returned to the Court.

5. Final accounts. See CRC §§ 7.1005-7.1007.

G. Discharges. Discharge of the guardian will not be made in the order settling the final account. A separate declaration for final discharge must be submitted, together with the receipt executed by the former ward and a copy of the order settling the final account and ordering delivery of the assets to the former ward. The declaration must state the date on which the ward reached majority. A guardian is not entitled to a discharge until one year after the ward has reached majority, unless the ward has given the guardian a valid release. Probate Code §2627.

H. Copies. All filings regarding guardianships must be accompanied by a copy designated for the Court Investigation Unit, Probate Department.

I. Current Addresses. All attorneys and guardians are required to keep the Court informed of their current addresses and phone numbers as well as the current address and phone number of the ward.

J. Use of Minor's Assets for Support in Guardianship Cases. Prior Court approval must be obtained before using guardianship assets for the minor's support, maintenance or education (Probate Code §2422). The petition must set forth what exceptional circumstances would justify any use of guardianship assets for the minor's support. Such request may be included in a petition for the appointment of a guardian. An order granting such petition should normally be for a limited period of time, usually not to exceed one year, or for a specific and limited purpose.

K. Disposition of Minor's Funds (Probate Code §§3410-3413).

1. Contents of Petition. A petition under these sections must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement showing that the requested relief will best serve the interests of the minor.

2. Notice. The petition may be presented ex parte if the only relief sought (other than reimbursement for filing fee and award of reasonable attorneys' fees) is to deposit funds in a blocked account. Otherwise, the petition must be noticed.

3. Blocked Accounts. Orders to Deposit Money into Blocked Account, and Receipt and Acknowledgment of Order for Deposit into Blocked Account must be on Judicial Council forms MC-355 and MC-356.

L. Orders for Withdrawal of Blocked Funds.

1. Prior to Majority. Where withdrawal is sought prior to the time the minor reaches the age of majority, the guardian must complete Judicial Council forms 357 and 358 and may present them to the Probate Department ex parte. The purpose and necessity of the withdrawals should be explained in detail. Withdrawals generally will not be approved except in cases of medical emergencies or exceptional need when the parents cannot afford to meet the needs of the minor in full. The order will specify that checks shall be made payable to the provider of goods and services and not to the guardian.

2. Upon Termination. Where withdrawal is sought because the minor has reached majority, and the order establishing the blocked account is not self-executing, a certified copy of the minor's birth certificate or other convincing evidence of the minor's age must be presented with the petition for withdrawal. The order must provide for payment of the funds only to the former minor.

M. Withdrawal of Attorney of Record. Attorneys who wish to withdraw from a guardianship must formalize that withdrawal

with a noticed hearing. Generally the Court will not accept the substitution of a guardian of the estate as a self-represented party.

N. Termination of Guardianship. A petition for the termination of a guardianship of person may be filed at any time during the guardianship but need not be filed when the ward turns 18 years of age. Where there is a guardianship of estate, a petition for termination is required even if accountings have been waived. At the hearing date for consideration of the petition for termination on waiver of final account, the attorney, guardian, and newly-turned adult must appear. Petitions for termination before the minor attains age 18 will be set for Tuesdays at 1:30 p.m.

14.90 Conservatorship

A. Special Requirements.

1. Copies. An extra copy of all conservatorship filings must be given to the Clerk of Court designated for the Court Investigation Unit, Probate Department.

2. Order Appointing Court Investigator. San Francisco does not use the Judicial Council form Order Appointing Court Investigator. Instead, the San Francisco form Notification to Court of Address of Conservatee and of Conservator is to be used and must be filed in duplicate. An extra copy must be given to the Clerk of Court designated for the Court Investigation Unit, Probate Department.

3. Contact Information. The Contact Information form must be filed with all petitions for appointment of conservator, with petitions for appointment of successor conservator, and with all accountings in conservatorship matters. The Contact Information form is available in the clerk's office or online at www.sfgov.org/courts.

4. Confidential Supplemental Information. All petitions for conservatorship must be accompanied by the Judicial Council form, Confidential Supplemental Information.

5. Deficits In Mental Functions. The proposed conservatee's deficits in mental functioning as set forth in Probate Code §812 should be addressed within the Confidential Supplemental Information form. If the conservatorship is contested, or if the petitioner requests determination that the proposed conservatee lacks capacity to give informed consent to medical treatment, the petitioner must file a capacity declaration (Judicial Council form GC 335) completed by the proposed conservatee's doctor.

6. Petition for Appointment of Successor Conservator. Petitions for appointment of successor conservators are heard on the Thursday morning calendar. Petitions for appointment of successor conservators must be filed in documents separate from accountings and other documents. Such petitions must be accompanied by two other forms:

a. Contact Information Form and

b. conservator confidential supplemental information

7. Court Supervision of Conservatee's Living Trust or Special Needs Trust.

a. A petition to bring a (proposed) conservatee's living trust or a Special Needs Trust under court supervision must be filed under a separate case number.

b. All accounts of, and petitions involving, trusts related to conservatorships must be filed under a separate case number.

c. The conservatorship or trust case number should be noted in parentheses under any pleading caption in the related matter.

B. Qualifications of Conservators who are not Private Professional Conservators. All conservators in this category must complete the education classes as ordered at the time of their appointment as conservator. These classes must be completed within six months of appointment as a conservator. A schedule of available classes will be provided to the appointed conservator at the time of the hearing. A Certificate of Completion must be filed with the Court. Failure to complete these classes may result in an order to appear in Court.

C. Handbook for Conservators. Before Letters of Conservatorship are issued, each conservator of the person or estate must obtain and file a receipt for the Handbook for Conservators. The Handbook includes a separate Resource Supplement. The cost of the Handbook may be reimbursed from the conservatorship estate. The Handbook is available in the Clerk of Court Office at the Probate Window.

D. Order Appointing Conservator. On the Judicial Council form Order Appointing Conservator, paragraphs 2f and 3f concerning the ability to vote should be left blank.

E. Additional Powers. The Court may, on the petition of the conservator either at the time of appointment or later, grant additional powers to the conservator as authorized by the Probate Code §§2590 and 2591. The Court does not favor the granting of special powers absent a showing of good cause. Any additional powers will be tailored to the specific circumstances of each case.

F. Medical Consent Authority. Probate Code §2354. All conservators of the person have the power to consent to medical treatment of the conservatee so long as the conservatee does not object. In emergencies, the conservator may require the conservatee to receive medical treatment even though the conservatee does not consent.

G. Exclusive Medical Consent Authority and Request for Dementia Powers.

1. Probate Code §2355. General mental confusion, disorientation, etc. will not alone support an order for exclusive medical authority. Such authority will only be granted if the following conditions are satisfied:

a. Court Investigator Report. It clearly appears from the court file that a Court Investigator has advised the conservatee of the effect of granting such authority and of the conservatee's rights in regard to such request.

b. Capacity Declaration. A Capacity Declaration, Judicial Council form GC 335, is filed stating an opinion that the proposed conservatee lacks the capacity to give informed consent to any medical treatment and that the proposed conservator should be granted the exclusive authority to give such consent and to consent over the objection of the proposed conservatee. The Capacity Declaration form is required when a petition requests dementia powers or when a Petition for Exclusive Authority to Give Consent for Medical Treatment is filed. Such declaration must state the factual basis for the opinion and the nature and extent of the examination and investigation.

c. Dementia Powers. Dementia powers for medication or secured placement may be requested at the time of the filing of the temporary or general conservatorship of the person or any time thereafter. Attachment Requesting Special Orders Regarding Dementia Powers, Judicial Council Form GC-313, must be filed: for proposed conservatorships, attach to the petition for conservatorship; for existing conservatorships, attach to Petition for Exclusive Authority to Give Consent for Medical Treatment. Requests for dementia powers require that the Court appoint an attorney for the conservatee.

2. Conservatee Regains Capacity. If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code §1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

H. Notice.

1. Giving Notice. Notice of hearing must be given in accordance with Probate Code §§1821 and 1822. Where the proposed conservatee is also subject to a LPS Conservatorship, notice must be given to the attorney representing the proposed conservatee in that action and to the LPS conservator.

2. Petition for Appointment of Conservator. There is no statutory basis for shortening the time for notice or for dispensing with notice on a petition for the appointment of a conservator.

3. Power of Attorney. If the proposed conservatee has executed a power of attorney (bank, limited, durable, general, for finances or for health care), the attorney in fact should receive notice of the petition for conservatorship. This information should also be included in the petition for conservatorship. The name, address, and telephone number of the person designated as the attorney in fact must be included in the Contact Information form.

I. Changes of Address. The conservator must promptly file notice with the Court of any changes of address or telephone number of the conservator, the conservatee, or the attorney for the conservator and provide the copy for the Court Investigation Unit.

J. Accounts and Reports.

1. Inventory and Appraisal; Payment of Assessment Fee; Recording of Letters. The Inventory and Appraisal is due ninety (90) days from appointment. The conservator must also pay the assessment fee for the first investigation unless the fee was waived or deferred by the Court. The conservator must also produce evidence of the recording of Letters as prescribed in Probate Code §2313. The Court will calendar a date for the filing of the Inventory and Appraisal, the proof of payment of the assessment fee and the filing of the evidence of the recording of Letters. The amount of the assessment fee and the filing date will be stamped on the Order Appointing Conservator at the time of the hearing. No appearance will be necessary if the Inventory and Appraisal, Proof of Payment of Assessment Fee, and evidence of recording of Letters are on file.

In lieu of a receipt, successor conservators must file an information only Inventory and Appraisal, using the values from the prior

conservator's inventory for non-cash assets.

2. General Plan. At the time the conservator is appointed, the Court will set a date for filing of the General Plan. A copy of the General Plan must be given to the Court Investigation Office. If the General Plan is on file on the date set by the Court, no appearance will be required unless deemed necessary by the Court. This local Court form is available in the clerk's office or online at www.sfgov.org/courts.

3. First Account. The first account is due one year after appointment. The Court will calendar the filing of the first account at the time of appointment of the conservator. Probate Code § 2620. If the account is on file with a hearing date set in the future, no appearance will be required unless deemed necessary by the Court.

4. Status Report. All conservators of estate who are also the conservators of person must file a Status Report at the time of all accounts. This local Court form is available in the clerk's office or online at www.sfgov.org/courts. The Contact Information form, with current information, must be filed with all Status Reports. The Court will calendar the filing of the first Status Report at the time of appointment of the conservator. If the Status Report is on file with a hearing date set in the future, no appearance will be required unless deemed necessary by the Court. The Status Report must contain information as to the health and placement of the conservatee, the amount and source of any monthly allowance for the support of the conservatee, the adequacy of the bond if there is one, and the amount of any outstanding liabilities.

Though not required by statute, these rules require that all conservators of person file a Status Report one year after appointment and every other year thereafter. The Status Report is required even if no conservatorship of estate exists.

The Status Report is Confidential and must be labeled as such by counsel. Status Reports must be filed separately from accountings and will be placed in the Conservatorship Confidential File.

5. Waiver or Deferral of Account. Waivers or deferrals of account will be accepted in the Court's discretion only in the following instances:

a. When the proceeding is terminated by Court order, and the conservatee thereafter waives an account.

b. When the proceeding is terminated by death of the conservatee and (a) there is no Will and a written waiver is obtained from all of the conservatee's heirs, or (b) there is a Will and a written waiver is obtained from the executor and the beneficiaries under the Will after the order admitting the Will has become final. Waivers will be accepted only from heirs or beneficiaries who are competent adults.

c. When a Court Investigator determines that the estate may qualify for deferral of accountings, a form will be furnished to the conservator. If the form is signed by the conservator and returned to the Court Investigation Unit within the time allowed, the Court may make an order deferring future accountings.

6. Final accounts where the conservatorship has been terminated by the death of the conservatee. Final accountings must be filed within 90 days of the death of a conservatee. Conservatorships where there has been a waiver of accountings or a deferral of court assessment fees must file a final report stating the current circumstances of the estate re: the need for a final accounting or the possibility of payment of the assessment fee. When the court learns that a conservatee has died and no final accounting or report has been filed, the court will set a status date for filing of the final accounting or report. When there is a conservatorship of person only, a declaration must be filed noting the date of death, and addressing the possibility of payment of the assessment fee.

Notice of the hearing on the settlement of the final account or report must be given to the personal representative of the probate estate, if one has been appointed, as well as to all of the parties as set forth in Probate Code §2621. If there is no personal representative, or if the representative and the conservator are the same person, then notice must be given to all devisees named in the conservatee's will and to the heirs of the conservatee so far as is known to the conservator.

The petition accompanying the final account should state the name of the personal representative of the deceased conservatee's estate. If probate proceedings have been filed in San Francisco, the number of the pending probate should be indicated. If probate proceedings are pending in another county, a certified copy of letters should be filed in the conservatorship. If probate proceedings have not been commenced and delivery of the assets may be made pursuant to Probate Code §13100, the names of those persons entitled to the delivery of the assets should be set forth and original 13100 affidavits must be on file.

The order settling the final account must provide for delivery of the assets to the named personal representative or to the devisees or heirs as indicated in the petition, and compliance with the order is a basis for discharge of the conservator.

The hearing on the petition for settlement of the final account should not be set until a personal representative has been appointed or the required declarations, pursuant to Probate Code §13100, are on file.

When the conservatee has died, and no final accounting has been provided to the court, the court investigator may set the matter for hearing. Notice of the hearing date will be given to the conservator and to the attorney using the form notice to close conservatorship. If the final accounting is on file and set for a future hearing date, and if the "proof of payment of assessment fees" has been filed, no appearance will be required unless the court requires it.

7. Final account where conservatee is living. Counsel are reminded that the final account must be served on the conservatee where the conservatorship has been terminated with respect to a living conservatee. In such cases, the proof of notice must clearly indicate the notice of the petition and the final account.

K. Sale of Real Property.

1. Court Confirmation. The Court will only grant a power to sell real property under Probate Code §2591 where the power is made subject to Court confirmation of any sale made by the conservator.

2. Petition for authorization to grant exclusive broker listings and to sell real property. A petition for authorization to grant an exclusive listing will be considered ex parte but only after prior authority to sell has been obtained on a noticed petition at the time of the appointment of the conservator or on a subsequent noticed petition. The petitions may be combined as a noticed petition. All conservatorship sales are subject to court confirmation notwithstanding Probate Code §2540. et. seq.

L. Sale of Conservatee's Residence. If the conservator petitions to sell the conservatee's present or former residence, the petition must allege that the conservatee is unable to return to the residence or, if able, that the conservatee agrees to the sale, or that the sale is necessary to generate cash to support the conservatee. The petition must include the information that the sale has been discussed with the conservatee pursuant to Probate Code §2540 (b). The report must include the responses of the conservatee. Where the sale of the conservatee's residence is sought, a copy of the petition must be provided to the Court Investigation Unit at the time of the filing of the petition. The Court may require further investigation of the issue.

M. Establishment of Trusts Funded by Court Order.

1. Application of this rule. The requirements set forth below apply to all trusts funded by court order, as defined by CRC, Rule 7.903(a), regardless of whether the beneficiary is subject to conservatorship. The court may waive one or more requirements upon a showing of good cause.

2. Terms of trust. Regardless of any other provision of a trust established under court order, in administering the trust, the trustee shall be subject to the same terms and conditions as a conservator of estate during the lifetime of the conservatee, unless specifically waived by the Court upon a showing of good cause.

3. Notice. Notice of all petitions relating to the trust must be given to all interested government agencies.

4. Order. The order authorizing creation of the trust must attach a copy of the proposed trust with space for the judicial officer's signature on the final page.

N. Assessment Fees. In accordance with Probate Code §1851.5, assessments for court investigations will be made at the time of the filing of each investigation report. Payment for the initial report and reports when a petition for a successor conservator has been filed are due and payable at the time of the filing of the Inventory and Appraisal. The Order Appointing Conservator will include the necessary information regarding the amount of the assessment and the date of payment. For review investigations, payment is due and payable prior to approval of the current account unless payment has been waived or deferred by the Court. At the time that the review investigation is mailed to counsel, the Assessment Fee and an Order for Payment will be included.

The form Proof of Payment of Assessment Fee must be on file for the Court to be notified that the fee has been paid. Where good cause is shown by petition, the assessment fee may be waived or deferred by the Court.

If the assessment fee is paid within 5 (five) court days of the calendared hearing date, a courtesy copy of the Proof of Payment of Assessment Fee should be delivered to the Probate Department.

If any assessments for the cost of investigations have been deferred due to the small size of the estate and the estate will be filing a final account, that account should address the issue of whether the estate can bear the cost of the amount of assessments deferred at the time of termination of the conservatorship. If the requirement for accountings has been waived and some or all of the amount of assessments has been previously deferred, the conservator may submit a declaration addressing the issue of whether the estate can bear the cost of the amount of assessments deferred at the time of termination of the conservatorship prior to being discharged.

If any assessment ordered for the cost of an investigation has not been paid as documented by the filing of a Proof of Payment of Assessment Fee form, the final accounting of the conservator will not be approved and the conservator will not be discharged.

Attorney fees will not be approved for payment. Proof of Payment of Assessment Fee forms are available in the office of the clerk of the court, Room 103.

O. Distribution of Assets. The order distributing assets must contain the name of the personal representative or the distributee(s) and a list of the assets.

P. Death or Resignation of Conservator.

1. If there are multiple conservators and one dies or resigns, the remaining conservator(s) must petition for a new bond and amended letters.

2. An order accepting a co-conservator's resignation must provide a status date for the former conservator's final account.

3. The bond of the former conservator will not be discharged without approval of the former conservator's final account.

Q. Withdrawal of Attorney of Record. Attorneys who wish to withdraw from a conservatorship must formalize that withdrawal generally with a noticed hearing. Substitution of a non-attorney In Pro Per is not acceptable to the Court.

R. Court-Appointed Attorneys. If necessary, the Court will appoint an attorney to represent a (proposed) conservatee. Attorneys who wish to be considered for appointment must complete Judicial Council Form GC-010, Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships, and provide the original form to the Judge of the Probate Court. For all Court appointed attorneys, see CRC, Rule 7.1101(f) regarding continuing education requirements.

1. Time of Appointment. Upon appointment, attorneys will be furnished with a Court Order and a copy of relevant filings. Court Investigator reports will also be made available. Court-appointed attorneys are expected to remain in close communication with the Court Investigator.

2. Personal Visit. Court-appointed attorneys are expected to personally visit the person they have been appointed to represent and to interview other individuals as the case may merit.

3. Representation as to Conservatorship Only. Court-appointed attorneys are expected to represent the (proposed) conservatee only on the issue of conservatorship. Other legal work, such as wills, real estate transactions, estate transactions, estate planning, tenant disputes, must be approved separately by the Court.

4. Role of the Court Appointed Attorney. Court appointed attorneys are expected to inform the Court of the wishes, desires, concerns, and objections, of the (proposed) conservatee. If asked by the Court, the attorney may give his or her opinion as to the best interests of the (proposed) conservatee and whether a conservatorship is necessary. No written report is required or necessary unless requested by the Court.

5. Fees. Fees for court-appointed attorneys are set by the Probate Department. Fees will be paid from the estate of the conservatee if there are assets. If there are no assets, payment will be made from the Controller's Office of the City and County of San Francisco at the prevailing rate $98 per hour for court-appointed attorneys.

6. Discharge. Court-appointed attorneys are expected to request discharge from the case at a time deemed appropriate by them and the Probate Department. At that time, the court-appointed attorney will petition for discharge and for fees. A declaration as to the nature and hours of work performed must be included with any petition for fees. A court appearance may not be necessary if all parties agree that discharge is appropriate. The matter may be handled ex parte with notice to the conservator.

14.91 Extraordinary Services in Decedent's Estates

See CRC, Rules 7.702 and 7.703. For administration of a decedent's estate commenced before July 1, 1991, §902 of the 1990 Probate Code is applicable.

For the administration of a decedent's estate commenced after July 1, 1991, additional compensation for the extraordinary services of the personal representative may be granted pursuant to Probate Code §10801 and additional fees for the extraordinary services of the attorney may be granted pursuant to Probate Code §10811.

Extraordinary compensation for representing the estate in litigation outside the regular administration of the estate, whether by the attorney for the representative or outside counsel, should be requested in advance and will ordinarily be allowed upon a properly noticed petition estimating the cost of the litigation. Upon proper showing, the Court may authorize progress payments prior to completion.

14.92 Compensation for Trustees, Guardians and Conservators

A. Criteria. Estate of Nazro (1971) 15 Cal.App.3d 218, 93 Cal. Rptr. 116, states the following applicable criteria:

1. the gross income of the estate;

2. the success or failure of the administration of the fiduciary;

3. any unusual skill or experience that the fiduciary in question may have brought to his/her work;

4. the fidelity or disloyalty displayed by the fiduciary;

5. the amount of risk and responsibility assumed;

6. the time spent in carrying out his/her duties;

7. the custom in the community as to allowances by settlors or courts, and as to charges of corporate fiduciaries;

8. the character of the work performed, i.e., whether routine or involving skill or judgment;

9. the fiduciary's estimate of the value of his/her own services.

14.93 Compensation for Guardians and Conservators of the Person

Fees for guardians and conservators of the person will be awarded on the basis of the amount and quality of the services rendered, actual time expended and hourly rate. All requests should be accompanied by declaration of the guardian or conservator.

14.94 Compensation Guidelines for Management of the Estate

Ordinarily, annual fees for guardians, conservators and trustee shall not exceed the following: One percent (1%) of the fair market value of assets at the end of the accounting period. Alternatively, a fee of six percent (6%) of income may be allowed in the Court's discretion. The Court will accept an allegation in the verified petition as to market values of the assets of the guardianship, conservatorship, or trust to support the fees requested according to the above guidelines.

Fee requests which exceed these guidelines must be supported by a declaration of services rendered, time expended, average hourly rate requested, results obtained and the benefit to the estate. Should the application of the guideline fee appear excessive, the Court may also require additional documentation and justification. The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services as "extraordinary."

14.95 When Will or Trust Instrument Sets Trustee's Fees

If the will or trust instrument contains provisions for a trustee's compensation, the trustee is entitled to receive compensation as provided therein. On a proper showing, the Court may allow a greater compensation when:

A. the trustee's services are substantially greater than those contemplated by the testator or settlor at the time the will was signed or the trust was created;

B. the compensation provided in the will or trust is so unreasonably low that a competent trustee would not agree to administer the trust, or

C. there are extraordinary circumstances.

14.96 Expenses of Tax-Related Services, Accounting and Bookkeeping.

The personal representative may employ tax counsel, tax auditors, accountants or other tax experts for the preparation of tax returns and for other tax related services, and pay from the funds of the estate for such services. The Court may deduct from the personal representative's statutory commission any sums paid from estate funds for performance of the representative's ordinary duties such as ordinary accounting and bookkeeping services, including the preparation of schedules for court accountings.

14.97 Attorney's Fees in Conservatorships, Guardianships and Trusts

The Court does not grant attorney fees in the Order Appointing Conservator. Attorney's compensation is allowed according to the work actually performed. Fee requests must be supported by a declaration under penalty of perjury of services performed, time expended, average hourly rate, results accomplished and benefit to the entity. In the event the attorney's office has performed

bookkeeping services for a fiduciary, the Court may award the attorney a larger compensation and the fiduciary a lesser compensation. Fees requested for time billed by a paralegal must be supported by the attorney's declaration regarding the paralegal's compliance with Business and Professions Code §6450.

14.98 Contingency Fee Contracts

All contingency fee contracts to which a personal representative, guardian or conservator is a party must be submitted to the Court for approval on noticed hearing. A copy of the contingency fee contract must be attached to the petition requesting approval. Probate Code §2644 and §10811.

14.99 Time for Allowing Compensation

A. In Decedent's Estates. Statutory compensation will be granted by the Court only in proportion to the work actually completed. In any event, the last twenty-five percent (25%) of the statutory compensation generally will not be allowed before the final distribution.

Compensation for extraordinary services will be allowed before final distribution only when it appears likely that the estate will remain in probate for an unusually long time, whether due to litigation or other cause, or on a showing that present payment will benefit the beneficiaries or the estate.

When a personal representative, who is an attorney, requests fees for services as the attorney in addition to the personal representative's compensation, Court approval must be requested within 90 days after Letters are issued to the attorney as the personal representative. The petition for approval of such additional statutory fees must be set on the regular hearing calendar and must set forth specifically why it would be to the advantage, benefit, and best interests of the decedent's estate (Probate Code §10804).

B. In Guardianships, Conservatorships and Trusts. No fees to the fiduciary or the fiduciary's attorney will be ordered paid in guardianships or conservatorship proceedings until the filing of an inventory and in no event, before the expiration of ninety (90) days from the issuance of letters. Probate Code §§2640-2642. The Court prefers to determine the amount of fees at the time an accounting is considered. If numerous Orders to Show Cause have been issued to effect compliance, the Court will consider reducing requested fees.

C. Fees or Commissions Taken in Advance. There is no authority for payment of any commissions or fees in decedent's estates, testamentary trusts, guardianships or conservatorships in advance of a court order authorizing such payment. Unless the Court has fixed an amount of a periodic compensation under Probate Code §§15682 and 2643, where commissions or fees are paid in advance of Court authorization, the Court will ordinarily require an appearance by counsel and a declaration stating the reasons for such payments. The Court may require a payment of interest on such payments or impose a surcharge. In petitions requesting reimbursement to a conservator or guardian for the payment of a retainer, the attorney must describe services performed and their benefit to the estate, before the Court will allow reimbursement.

14.100 Procedure

A. Form of Application for Compensation. An application for compensation may be included in a petition for settlement of account, in a petition for distribution, or in a separate petition under Probate Code §§2640, 2642, 10831(b) and 17200. The application should request a specific amount and not merely "reasonable fees."

B. Contents of Petition. All applications for commissions and fees in trusts, guardianships and conservatorships must be supported by a description of the services forming the basis of the request, including the surrounding circumstances, the benefit to the entity, the time spent and the average hourly rate.

Applications for compensation for extraordinary services in a decedent's estate will not be considered unless the caption of the petition and the notice of hearing include a reference to the request.

C. Notice. Notice will be required to a non-petitioning personal representative or fiduciary and when appropriate, to the residuary beneficiaries or, in an insolvent estate, to the major creditors.

D. Notice to Prior Representative or Attorney. If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless:

1. a waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;

2. an agreement on the allocation of fees and/or commissions is on file or included in the petition; or

3. the file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the Court.

E. Contents of Proposed Order. When extraordinary or other fees are requested, the amount requested should be inserted in the proposed order, even though the fees have not yet been allowed by the Court. If the Court allows a fee other than that requested, counsel may revise the order or have the Court change and initial the amount allowed.

14.101 Imposition of Lien.

Where all or a portion of the fee awarded exceeds the cash on hand in the estate, the Court may issue an order imposing a lien accruing five percent (5%) simple interest for fees on any or all of the assets in the estate. Ordinarily, enforcement of the lien will be deferred until the assets of the estate, subject to the lien, have been liquidated for reasons other than the satisfaction of an unpaid fee.

14.102 Costs Reimbursed or Absorbed in Fee

A. Reimbursed.

Court clerk's fees.

Newspaper publication fees.

Surety bond premium.

Appraisal fees.

B. Absorbed as part of fees.

Secretarial and word processing time.

Computer time.

Local mileage and parking.

C. Reimbursed only in Court's discretion, depending upon circumstances disclosed.

Long distance telephone

Long distance travel

D. If attorney's fee is waived (as when attorney is also representative) show details of costs in first accounting covering period of disbursement.

E. Obtain prior Court permission if amounts are unusually large.

14.103 Executor/Attorney Compensation on Sale of Real Property

Where the attorney or personal representative is also a licensed real estate agent or broker, the attorney or personal representative may collect the statutory fee as well as the commission on the sale of real property subject to prior Court approval, however, no extraordinary fees shall be awarded.

Rule 14 amended effective July 1, 2009; adopted July 1, 1998; amended effective January 1, 2000; amended effective January 1, 2001; amended effective January 1, 2003; amended effective January 1, 2004; amended effective January 1, 2005; amended effective July 1, 2006; amended effective January 1, 2007; amended effective July 1, 2007; amended effective January 1, 2008; amended effective July 1, 2008; amended effective January 1, 2009.

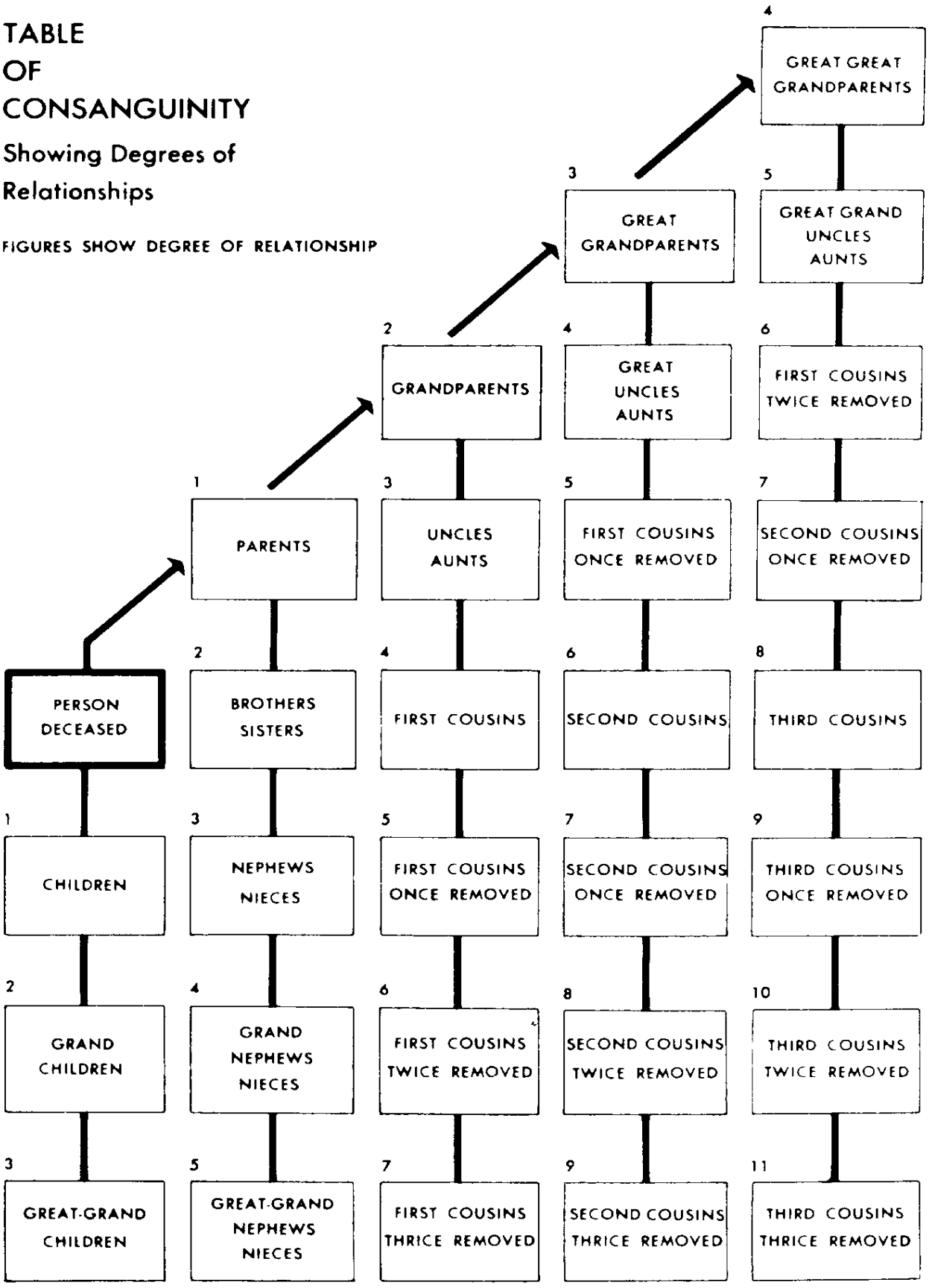
APPENDIX A

Print

TABLE OF CONSANGUINITY

Showing Degrees of Relationships

FIGURES SHOW DEGREE OF RELATIONSHIP



APPENDIX B

RULES FOR DETERMINING COMMISSIONS ON
SALES OF REAL PROPERTY
(PROBATE CODE, SECTIONS 10160-10167)

AGENT A—represents original bidder where bid is being returned for court confirmation.

AGENT B—represents successful overbidder.

Agent A's Commission

(1) One-half of commission on the original bid returned for confirmation.

Agent B's Commission

(1) Calculate full commission on successful overbid.

(2) Subtract Agent A's commission.

(3) The balance will be Agent B's commission.

Example 1	
AGENT A—represents original buyer whose bid is	$200,000
AGENT B—represents successful overbidder at	$210,500
Agent A's Commission—$200,000 at 5% $10,000 divided by 2	$5,000
Agent B's Commission—$210,500 at 5% less $5,000	$5,525
Example 2	
No agent on original overbid.	
Agent B for successful overbidder at $210,500. Commission limited to 50% of overbid amount: $10,500 divided by 2	$5,250

Probate Code, Section 10162.

See Law revision Commission comment 1987 Addition—Probate Code, Section 10161.

APPENDIX C
CHECKLIST OF COMMONLY ENCOUNTERED PROBLEMS AND REASONS FOR DELAY

1. Proposed orders not submitted on time (2 weeks before hearing).

2. Proofs of mailing notice not on file or defective, or required notice not given, as for example:

a) on probate distributions, beneficiaries not noticed;

b) on trust accounts, remaindermen not noticed;

c) on petitions under Probate Code §17200, failure to mail copies of petition when required, or to refer to that mailing on the proof;

d) when pleadings are amended—new notice required;

e) on petitions to admit a will and codicils, failure to give notice to a beneficiary whose bequest has been revoked by a codicil;

f) failure to give notice to a contingent beneficiary, e.g., where a will proscribes a survival period and the survival period has not elapsed.

3. Account in poor form:

a) no summary reconciling charges and credits;

b) starting figure incorrect or missing (e.g., amount of inventory, amount received on distribution, or amount on hand at last account);

c) inadequate itemization of income, not showing source and dates;

d) showing principal items as income or "receipts;"

e) inadequate itemization of disbursements, not showing dates of payments, to whom paid and for what purpose;

f) failure to show property on hand;

g) computation of statutory fees unclear or defective;

1) claiming "statutory fees" on community property passing to a spouse, where there has been no §13502(b) election;

2) erroneously increasing estate accounted for by refunds received on death taxes, returned deposits on sales and advances by beneficiaries;

4. Failure to caption petition so as to give complete notice and full information as to contents.

5. Death taxes not allocated or prorated in petition for final distribution, where there is no tax clause.

6. Creditors claims filed with Clerk of the Court, but not acted upon by the personal representative.

7. Failure to describe assets on hand in petitions for distribution, or to describe assets in orders making distribution and failure to include full legal description of real property in decree of distribution and in orders confirming sale of real property.

8. Failure to sufficiently allege and describe services rendered on extraordinary fee requests.

9. Incomplete facts re identity and genealogy of issue of predeceased child and heirs of predeceased spouses and other non-obvious heirs.

10. In petitions to settle trust accounts, failure to justify by appropriate allegation (e.g., consent of beneficiaries) any deviation from the usual method of charging fees one-half to income and one-half to principal.

11. In petitions and orders for distribution, failure to provide for the statutory interest on general pecuniary bequests.

12. Failure to allege and explain a plan of distribution in cases where there is insufficient cash, where cash adjustments are required, or where there are complexities in allocating or prorating death taxes or computing distributable percentages of residue.

13. In appropriate cases (e.g., specific bequests and distributions to trusts), failure to allocate probate income on final distribution.

14. Failure to use current Judicial Council forms.

15. Failure to allege the status of bonds and the possible need for increase or decrease in petitions to settle accounts of guardians and conservators, or in petitions to release blocked funds.

16. Omission of verification by petitioner.

17. Attachment of inappropriate "exhibits" to proposed orders.

18. In petitions for final distribution, failure to justify the proposed distribution by references to the will or by outlining the intestate entitlement.

19. In proposed orders for final distribution, proposing findings or orders not covered in the petition, or incorporating trust provisions of the will by reference, rather than setting them forth in full.

20. Ex Parte Orders:

a) lack of personal appearance by attorney and proposed fiduciary on applications for special letters of administration or temporary letters of guardianship or conservatorship;

b) failure to submit copies of receipts and decree of distribution with applications for discharge.

c) failure to allege status as to requests for special notice;

d) failure to allege specific jurisdictional facts on petitions to approve sales of depreciating property or property causing expense, particularly with respect to jewelry, coins or furniture;

e) on application for exclusive listing agreements, failure to attach a copy of the proposed agreement on an appropriate form adapted for probate sales, and to allege reasons why the exclusive listing is advantageous;

f) on petitions or stipulations for correcting orders, failure to make allegations or recitals showing entitlement to relief under CCP §473.

21. Inventories:

a) no indication as to whether property is separate or community;

b) property inadequately described;

c) properly inventoried assets omitted;

d) improper assets included.

APPENDIX D
EX PARTE GUIDELINES FOR PROBATE

1. Ex parte hearing calendar. The following matters may be set on the daily ex parte probate calendar according to existing procedures for scheduling and notice:

- Petition for appointment of temporary conservator
- Petition for supplemental powers of temporary conservatorship if an urgent need arises during the temporary conservatorship
- Petition for appointment of temporary guardian
- Petition for letters of special administration
- Petition for appointment of temporary trustee if there is a need for an immediate appointment
- Application for order shortening time
- Application for temporary restraining order
- Other matters only with approval of the court

2. Mail-in or drop-off requests. All ex parte matters not listed above for setting on the daily ex parte probate calendar may be submitted by leaving an endorsed filed copy with the probate secretary. If the papers have a date by which action must be taken, the petitioner must attach to the Probate Department copy a cover sheet in the form provided by the court to inform the court of the date and the action.

3. Matters that will not be considered on an ex parte basis.

- Petitions to determine entitlement to property (e.g. Heggstad & §850 petitions)
- Petitions for substituted judgment under Probate Code §2580
- Petitions for preliminary or final distributions
- Requests for partial statutory fees or commission
- Appointment of successor trustees
- Petitions for termination of trusts, for settlement of accounts and/or for final distribution
- Petitions to approve settlement agreements (unless previously authorized by a judicial officer in open court)
- Reducing conservator's bond during an interim accounting period when no accounting is presented

- Sale of a conservatee's residence
- Encumbering a conservatee's residence including requests for reverse mortgages, equity lines, etc.
- Conservator's fees on account
- Authorization to retain counsel on contingency fee contract

For any of the above matters, the court will consider a special setting upon the presentation of a declaration explaining the necessity and reasons for a special setting. An order shortening time for notice can also be obtained through the ex parte appearance calendar.

APPENDIX E
PROBATE FEE SCHEDULES 2003-2005

For all probate fee schedules 2003-2005, log onto website sfgov.org/site/courts_page.asp?id=3802.

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San Joaquin County
Probate Rules

Effective January 1, 2010

RULE 4
PROBATE

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RULE 4
PROBATE

PART ONE
GENERAL PROCEDURAL GUIDE

4-101 UNCONTESTED MATTERS

A. Probate Calendar Days

Due to the limited number of cases that can be heard on any given day, a hearing date must be reserved in advance by calling the Probate Clerk at (209) 468-2843.

Every petition which is to appear on calendar must include the appropriate Judicial Council "Notice of Hearing" form. This document initiates the clerk's calendaring process. Petitions and the Notice of Hearing document must be filed three weeks before the date reserved or the matter will not appear on calendar. Matters involving the Public Defender must be set for hearing Tuesdays or Thursdays only.

B. Tentative Rulings

Attorneys may call (209) 468-2866 after 1:00 p.m. on the day preceding the hearing to hear a tape recorded message announcing the tentative ruling on the petition.

(Eff. 01/01/08)

FORMER RULE 4-102. [CONTESTED MATTERS] RENUMBERED EFF. 1/1/08.

(Rule 4-102 renumbered as rule 4-103)

4-102 EVIDENCE CONCERNING ROUTINE MATTERS

At a hearing on a verified petition of a routine uncontested probate matter, oral testimony will not be permitted. All evidence should be stated in the petition, or in a declaration (or affidavit) filed five (5) full court days in advance of the hearing date.

(Renumbered eff. 1/1/08; previously amended Rule 4-105 eff. 1/1/99)

FORMER RULE 4-103. APPROVED MATTERS - WHEN PERSONAL APPEARANCE NOT REQUIRED - HOW

ORDER IS OBTAINED [REPEALED]

(Rule 4-103 repealed eff. 1/1/08; previously amended eff. 1/1/99)

4-103 CONTESTED MATTERS

If a contested matter can be submitted on the pleadings with argument, it will be heard at the end of the probate appearance calendar. As time permits, brief offers of Proof will be allowed.

Contested matters requiring 2 hours or less will be heard on a date certain in the Probate Department. Contested matters estimated to take more than 2 hours will be set on the probate calendar for trial and will be assigned to an available trial department. Counsel may reserve a mutually agreeable date by speaking to the Probate Clerk. Caveat: The court does not mail notices of continued hearings.

(Renumbered Eff. 1/1/08; previously amended as rule 4-102 eff. 1/1/99.)

FORMER RULE 4-104. MATTERS NOT ON APPROVED LIST—WHEN PERSONAL APPEARANCE NOT REQUIRED [REPEALED]

(Rule 4-104 repealed eff. 1/1/08; previously amended eff. 7/1/98.)

4-104 WHEN PERSONAL APPEARANCE REQUIRED

A. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator and on petitions for confirmation of sale of real property.

B. The attorney for a conservatee, or ward, shall personally appear on petitions which concern the conservatee, or ward, respectively.

(Eff. 1/1/08)

FORMER RULE 4-105. [EVIDENCE CONCERNING ROUTINE MATTERS] RENUMBERED EFF. 1/1/08.

(Rule 4-105 renumbered as rule 4-102.)

4-105 CONSOLIDATION WITH THE LOWEST NUMBER

Whenever it appears that actions or petitions with different numbers have been filed with reference to the same decedent or the same ward or conservatee, the court will on its own motion consolidate all of the matters with the matters bearing the lowest probate number.

(Renumbered eff 1/1/08; previously amended as rule 4-108 eff. 7/1/98)

4-106 EX PARTE APPLICATIONS

In the following matters notice in the manner provided in California Rule of Court 379 is required, in addition to any notice expressly by statute:

Any petition regarding conservatorship,

Any petition regarding guardianship, and

Petitions for special administration, waiver of appraisal by probate referee and shortening time for publication of sale of real property in decedent's estates.

(Renumbered eff. 1/1/08, previously amended Rule 4-110, Eff. 7/1/06)

4-107 ADDITIONAL INFORMATION REGARDING BENEFICIARIES

Where any decedent's estate petition calls for relationship of intestate heirs and devisees, sufficient information shall be included to permit determination of heirship by the court. If any beneficiary named in the Will has predeceased the testator, the fact should be stated. Eff. 1/1/08.

(Renumbered eff. 1/1/08, previously repealed Rule 4-1103 [Repealed 7/1/06])

4-108 WORDING

All orders and judgments in probate matters must be completed in themselves so that their general effect may be determined without reference to the petition on which they are based. All matters actually passed on by the court, including the relief granted, the names of persons and description of property (and if real property involved, the legal description thereof), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements, must be set forth with the same particularity which is required in judgments in civil matters.

Riders and exhibits should not be attached to an order or decree; except that an exhibit setting forth legal descriptions, a statement of trust terms, and the like may be attached if specifically incorporated in the body of the order or decree. The Judge's signature should appear at the end of the last attachment with an appropriate indication of that fact on the last page of the body of the order or decree or (2) if the signature is at the end of the body of the order or decree, there should be a specific reference in the body of the document to the number of pages contained in the attachment.

(Renumbered eff. 1/1/08, previously amended Rule 4-401, Eff. 7/1/98)

4-109 WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING

In the following cases a copy of the petition as well as a copy of the Notice of Hearing must be served on all interested parties:

Where the petition contains the accounting of a testamentary trustee;

Where a fiduciary or attorney is requesting extraordinary fees or commissions.

(Renumbered eff. 1/1/08, previously amended Rule 4-201, Eff. 7/1/98)

4-110 PROHIBITION AGAINST ADVANCEMENT OF PROBATE MATTERS ONCE NOTICED

When a hearing on a probate matter has been noticed, or when it has been notices and continued to a definite date, the matter cannot be heard before the date set, neither by means of a new petition, an amended petition, a new notice, or otherwise.

(FORMER RULE 4-205, renumbered eff. 1/1/08, previously amended Rule 4-205 Eff. 7/1/98)

PART TWO
DECEDENT'S ESTATES

4-201 NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES

In addition to the Notice of Hearing required to be mailed by Probate Code sections 8110-8113, notice shall also be mailed to all contingent devisees and beneficiaries named in the Will.

(Renumbered eff. 1/1/08, previously amended Rule 4-206 Eff. 7/1/98)

4-202 ADVISEMENT FORM REQUIRED FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

An official printed form, entitled "NOTICE TO HEIRS OF LAWS" is available at the Clerk's Office. At least 15 days prior to the hearing of the petition for appointment of a personal representative, a copy of that form must be mailed to the following:

In intestate estates, each person entitled to receive a copy of the Notice of Hearing;

In testate estates, each person or institution named in the Will to receive an asset of the estate.

The fact of such mailing must be proved by a declaration of mailing on file prior to the hearing on the petition.

(Renumbered eff. 1/1/08, previously amended Rule 4-300, Eff. 01/01/04)

4-203 PETITION FOR TEMPORARY OR SPECIAL LETTERS

A. Necessity for filing Petition for Permanent Letters

A petition for special or temporary letters will not be considered unless a petition for permanent letters has been filed or is being filed concurrently with the petition for special for special or temporary letters.

B. Letters

The Judicial Council form of Letters should be modified to read: "Special Administrator of decedent's estate with the powers specified in the Order for Probate ONLY".

(Renumbered eff. 1/1/08, previously amended Rule 4-304, Eff. 1/1/04)

4-204 SALE OF REAL PROPERTY UNDER I.A.E.A.

An executor or administrator who has been appointed with full powers under the I.A.E.A. but who voluntarily petition for court confirmation of the sale of real property will be required to prove either of the following:

Compliance with the publication or posting requirements of Probate Code Section 10300 or Section 10301, or,

That decedent's Will contains a power of sale or a direction to sell or waives notice.

(Renumbered eff. 1/1/08, previously amended Rule 4-602, Eff. 7/1/98)

4-205 BROKER'S COMMISSION

Upon the confirmation of the sale of real property, justification is required for a commission in excess of six percent.

(Renumbered eff. 1/1/08, previously amended Rule 4-603, Eff. 7/1/98)

4-206 APPLICATION FOR FAMILY ALLOWANCE

The petition shall include:

The applicant's income from sources outside estate;

An itemized list of the applicant's assets, and a statement of the approximate value of each;

a general statement of the assets and of the liabilities of the estate;

The date of the application;

The date of the decedent's death;

A general statement of other applications (if any) on file for allowances.

(FORMER RULE 4-206, NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES, Renumbered To Rule 4-201 Eff. 1/1/08 Rule 4-206 Eff. 1/1/08)

4-207 PETITION FOR PRELIMINARY DISTRIBUTION

A. The petition shall not be granted unless the inventory and appraisement has been filed.

B. The petition for preliminary distribution must state:

the approximate value of the property remaining in the estate after the proposed distribution, and

an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities.

C. If waiver of bond for any distribute is sought, the petition shall include allegations that:

Notice to any known and reasonably ascertainable creditors has been given.

The estate is solvent.

The good cause, if any, why bond should not be required, including that time for filing or presenting claims against the estate has expired and that all taxes and uncontested claims have been paid or are sufficiently secured.

(Eff. 1/1/08)

4-208 REQUEST FOR PARTIAL ALLOWANCE ON STATUTORY COMPENSATION

A. The petition must contain the following allegations:

That the requested sums can be paid without detriment to the estate or to any person interested in it or to any creditor thereof;

The percentage that the requested amount bears to the total statutory compensation to which the petitioner or the attorney will be entitled on final settlement of the estate, and that (1) the same percentage, or more, of the total ordinary work required in the estate has been completed, and (2) payment of the requested allowance would leave a reserve exceeding the ordinary work remaining to be done.

B. If an allowance of statutory attorney fees is requested, the attorney shall sign a declaration at the end of the petition attesting to the truth of the allegations service of notice.

(FORMER RULE 4-1603, renumbered eff. 1/1/08, previously amended Rule 4-1603 Eff. 7/1/98)

4-209 STATUS REPORT REQUIRED ALLEGATIONS

The status report required by Probate Code Section 12200 shall include the following allegations:

The date of decedent's death;

The date of issuance of Letters;

The filing date of the Inventory (or Inventories), and the total value thereof;

A statement whether the value of the estate required the filing of a federal estate tax return, and if so, the date filed and the amount of tax paid;

A statement of the condition of the estate in regard to the payment of debt and claims, and the general nature and value of the assets on hand;

A statement of the reason or reasons the estate has not been distributed and closed;

A statement of estimated time required to complete the administration;

A statement of the reasons, if any, why continued administration would be in the best interest of the estate and the persons interested in it.

(FORMER RULE 4-1601, renumbered eff. 1/1/08, previously amended Rule 4-1601 Eff. 7/1/98)

4-210 FORM OF ACCOUNT FOR INCOME AT FINAL DISTRIBUTION

When all or any part of the estate is to be distributed to a trustee, and income accumulated during probate is to be paid by the trustee to the trust beneficiaries, the form of account shall properly allocate receipts and disbursements between principal and income.

When a specifically devised or bequeathed asset has earned income and/or incurred expenses during probate administration, the form of account shall segregate such income and/or expenses from the general income and expenses of the estate. This may be done by a schedule attached to the accounts and incorporated by reference. Eff. 1/1/08

4-211 COMPENSATION MUST BE CALCULATED IN THE PETITION

In a petition for distribution, whether or not accompanied by accounting, there shall be set out a calculation of the statutory compensation of the personal representative and the attorney.

(FORMER RULE 4-702, Renumbered eff. 1/1/08, previously amended Rule 4-702 Eff. 7/1/98)

4-212 FEES AND COMMISSIONS MUST BE FIXED BEFORE PAYMENT

A petition for partial allowance on statutory compensation, filed prior to the petition for final distribution must contain a recital of the work actually completed. Ordinarily the last 30 percent of the statutory compensation will not be allowed prior to the approval of the final accounting.

(FORMER RULE 4-703, Renumbered eff. 1/1/08, previously amended Rule 4-703 Eff. 1/1/99)

4-213 EXTRAORDINARY ATTORNEY FEES

A. The following types of legal services are considered to be outside the scope of services contemplated by the statutory fee provisions of the Probate Code, and additional compensation may be allowed on an individual basis upon a detailed statement of services rendered:

Spousal Set-Asides

Preliminary distribution to residuary beneficiaries and trustees

Petitions for Authority to Carry Out Decedent's Contracts

Representation of the fiduciary in the following tax matters:

audits of federal estate tax and income tax returns

appeals from tax audits

proceedings in tax court

tax elections

Q-TIP elections

generation skipping tax elections

Leases

Petitions to Borrow Money

Heirship Proceedings

Petitions for Family Allowance

Sales (personal and real property)

Operation of decedent's farm or business

B. Petition and Prayer

1. Application for extraordinary compensation will not be considered unless both the caption and the prayer of the Petition and the Notice of Hearing contains a reference to such application.

2. The services claimed to be extraordinary must be stated in detail, including time spent, dates, results accomplished, and other facts that would guide the Court in assessing the compensation. If more than one category of extraordinary service was rendered, the services must be separately stated and a value assigned to each. The total amount requested for all such services must be stated. The total number of hours spent on each category of extraordinary service should be summarized. (Eff. 07/01/05)

C. Notice of Hearing

In every case, notice shall be sent to all persons entitled to a share in the estate, except those whose shares will not be charged with the compensation requested. Notice shall include a copy of the petition served with the notice. An appearance by the attorney will normally be required.

D. Order

The order should list separately, and provide separate compensation for, each category of service. The amounts requested should be typed in the proposed order.

(Renumbered eff. 1/1/08, previously amended Rule 4-704 Eff. 7/1/05)

4-214 FEES TO ATTORNEY AND PERSONAL REPRESENTATIVE WHO ARE ASSOCIATED

If both the representative and the attorney for the personal representative have a fee sharing arrangement with respect to the

estate or law practice, only the statutory commissions as representative will be allowed unless: the Will expressly provides otherwise, or, an order allowing statutory attorney fees has been granted by the court prior to the filing of the petition for final distribution. Such order will not be granted except in cases involving extreme, unusual circumstances. The motion must be set for hearing in not less than ten days, and notice thereof must be given to all persons who would be affected by the allowance of attorney fees.

(Renumbered eff. 1/1/08, previously amended Rule 4-705 Eff. 7/1/98)

4-215 REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

In addition to other items required by law, a petition for final distribution shall contain the following:

A. Full and complete description of all assets on hand, including the legal description of real property. The descriptions may either be set forth in the body of the petition, or by an attached schedule incorporated by reference.

B. Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

C. A computation of the attorney's fees and representative's commissions requested, or a statement concerning the waiver thereof.

D. A schedule of claims showing the name of the claimant, the amount claimed, the date presented, the date allowed, and if paid, the date of payment; as to any claims rejected, the date of rejection. The original of the notice of rejection for each rejected claim must be filed together with declaration of mailing.

E. A schedule showing the pro-ration of fees and costs.

F. The Federal Estate Tax has been paid, or, the Federal Estate Tax has not been paid because the estate is too small to require payment of tax, or, the Federal Estate Tax has been deferred by agreement with the taxing agencies. If deferred, whether a lien has been imposed, and pertinent information about the lien.

When proration is required by Probate Code Section 20111, the accompanying account should include a schedule indicating the method by which the proration has been computed.

G. One of the following allegations concerning creditor's claims:

1. A notice to creditors was given, in the form prescribed by the Probate Code, to all known and reasonably ascertained creditors of the estate; or

2. Notice to creditors was not required because of the provisions of Probate Code Section 9054; or

3. No notice to creditors was given because there was not known or ascertainable creditors.

(Renumbered eff. 1/1/08, previously amended Rule 4-1001C, Eff. 7/1/06)

4-216 MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

The following allegations, if applicable, should be included in a petition for final distribution:

A. Distribution to Minors

If distribution is to be made to a minor or an incompetent, facts showing compliance with Probate Code Section 3300 et seq. should be alleged, or an allegation made concerning the existence of a duly appointed guardian for the minor (in which case a current certified copy of the letters of guardianship should be attached to the petition and incorporated by reference.)

NOTE: If permission is sought to distribute property to parents of a minor under the provisions of Probate Code Section 3400 or otherwise, an affidavit complying with the terms of that statute or an appropriate order under that statute must be filed in advance of the hearing, and the decree should indicate that the distribution is made pursuant to those sections of the Probate Code.

B. Distribution to a Trust

If distribution is to be made to a trust, an acknowledged statement by the trustee accepting the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be

accompanied by a petition by the personal representative for the appointment of a substitute trustee.

C. Distribution to an Assignee

If distribution is to be made pursuant to an assignment of interest, the assignment must be filed and the details of the consideration set forth in the petition. The assignment must contain a notarial acknowledgment.

D. Distribution Pursuant to Agreement

If the distributes seek distribution in a manner other than that provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement (signed by all involved distributees and acknowledged before a notary public must be filed.

NOTE: If any such distributee is a minor or is under disability, the agreement must be signed by the minor's legal guardian. Either earlier court approval to the agreement in the guardianship proceeding must be provided in the probate proceeding or a petition for approval of the agreement in both the guardianship proceeding and the probate proceeding must be brought on for hearing at the same time.

E. A Statement of the Status of Assets

If decedent left a surviving spouse or if distribution is to be made to heirs of a predeceased spouse pursuant to Probate Code Section 6402.5, the petition must contain a statement of the community or separate status of all assets to be distributed.

F. Reimbursement for Costs Advanced

If counsel or the personal representative is seeking reimbursement for costs in excess of $100.00, an itemization of those costs must be set forth.

(Renumbered eff. 1/1/08, previously amended Rule 4-1002 Eff. 7/1/98)

4-217 REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION

A. Distribution to Minor's Legal Guardian

In all distributions to minors (other than Section 3300 and 3400 et seq. distributions and distributions to a custodian under the California Uniform Transfers to Minors Act), the decree shall provide that the property be distributed to the minor, with custody of the property delivered to the legal guardian of the minor. The guardian shall sign the distributee's receipt in his or her capacity as guardian.

B. Distribution to Testamentary Trustee

The terms of the trust and the powers of the trustee must be set out in full in the decree of distribution, and not merely incorporated by reference. When appropriate, the language of the will should be paraphrased in the decree to eliminate references to "my" and to substitute "the decedent's".

(Renumbered eff. 1/1/08, previously amended Rule 4-1004 Eff. 7/1/98)

PART THREE
SPOUSAL PROPERTY PETITIONS

4-301 PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME

If a Will contains a period of survival as a condition precedent to the spouse's right to receive assets, the petition cannot be set for hearing until the survival period has expired.

RENUMBERED EFF. 1/1/08, previously amended Rule 901 Eff. 7/1/98

4-302 WHEN PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT

In a petition for order confirming the passage of property to the surviving spouse without administration (Probate Code Sections 13650, et seq.), unless specifically devised and characterization of property as community property is not necessary, the following specific facts must be stated:

The date the asset was acquired and the date of the marriage.

That the deceased spouse and the surviving spouse were married at the time of acquisition and were then domiciled in California; or if domiciled elsewhere, how the asset would be considered community property.

The manner in which the asset was acquired, purchased, exchange, gift inheritance or otherwise, and, if acquired by purchase or exchange, how the source of the consideration was community property, or, if acquired by gift or inheritance, how the asset is now community property, e.g., gift or bequest to both spouses, transmutation agreement, etc..

Any other information that establishes the community character of the property.

(Renumbered eff. 1/1/08, previously amended Rule 902, Eff. 1/1/99)

PART FOUR
TRUSTS

4-401 FEES

A. If the court has jurisdiction of the trust, no trustee or attorney fees shall be paid until there has been an order of court fixing the same or unless the fees qualify as "Advance Payments" as outlined in these Rules.

B. If the petition for fees is part of a petition seeking other relief, the title of the petition embodying such application for fees and the notice of hearing shall include a reference to the request for fees.

C. Trustee's Fees: In the absence of a formula in the Will for Trustee's fees, the normal fee presently allowed by the court for an annual accounting covering a twelve-month period is three-fourths of one percent of the market value of the trust assets on the date of the current accounting. If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased. A trustee who seeks greater compensation must detail in the petition facts that would justify the request; if more than one category of unusual services was rendered, the services must be separately stated and a value assigned to each.

D. Attorney's fees: In the absence of a formula in the will for fees of the attorney for the trustee, the attorney fees for preparation, filing, and presenting the report and order (in absence of demonstration to the contrary) will generally be:

1. For counsel to a trust company, or a professional trustee, an amount equal to one-third of the trustee's normal fee, as computed in Section C, for a twelve-month period, or $750.00, whichever is greater;

2. For counsel to a trustee who is not a trust company or a professional trustee, an amount equal to one-half of the trustee's normal fee, as computed in Section C, for a twelve-month period, or $750.00, whichever is greater.

Attorney fees for accountings for periods longer than twelve months will not automatically increase, proportionately or otherwise. An attorney who seeks greater compensation must detail in the petition the time spent, the difficulty of the services, the results accomplished, and other facts to guide the court in assessing the merit of the request. If more than one category of services was rendered, the services must be separately stated and a value assigned to each.

(Renumbered eff. 1/1/08, previously amended Rule 4-1104, Eff. 7/1/98)

4-402 REPORT OF TRUSTEE

A report shall contain:

A. A concise reference to the purposes of the trust and how they have been satisfied by the trustee during the period of the account;

B. The names and addresses of the beneficiaries (both present and future interests);

C. A brief summary of distribution made to or for the benefit of the beneficiaries;

D. The investment objectives and results with reference to the purposes of the trust, when appropriate;

E. A statement of the percentage rate of return on all property invested. The purpose of the report is to provide a brief summary of the account measured in terms of the specific trust objectives and requirements. It should not merely recite what has been done, but should relate the activities reflected in the account to the purposes and persons for which the trust was created.

(Renumbered eff. 1/1/08, previously amended Rule 4-1105 Eff. 7/1/06)

4-403 PETITION TO DETERMINE PROPERTY HELD IN TRUST

Whenever a petition is filed which seeks to establish that any interest in property is held by a trust, the petition shall plead facts which establish, and list, the persons to be served pursuant to Probate Code section 17203(b), including but not limited to, the following persons:

Each person claiming an interest in, or having title to or possession of, the property.

Each known intestate heir.

Each known devisee whose interest in the property would be affected.

(Renumbered eff. 1/1/08. previously amended Rule 4-1106 Eff. 7/1/00)

PART FIVE
CONSERVATORSHIP

4-501 APPOINTMENT OF PROBATE INVESTIGATOR

The Probate Investigator of the Superior Court is hereby appointed to investigate all petitions for appointment of conservator, grant of extraordinary powers, sale of personal residence, exercise of substituted judgment, annual conservatorship accounts and petitions regarding proceedings for particular transactions. In these matters no petition for appointment is necessary. To avoid such automatic appointment, a petition to waive appointment must be filed concurrently with the underlying petition.

(Renumbered eff. 1/1/08. Previously amended Rule 4-1200 Eff. 1/1/99)

4-502 CONFIDENTIAL SCREENING FORM

The Confidential Conservator Screening Form shall contain both the California, or other state, driver's license number and the social security number of the proposed conservator. Eff. 1/1/08

FORMER RULE 4-502 - CREDITORS CLAIMS OF PERSONAL REPRESENTATIVE AND OF ATTORNEY OF RECORD [Repealed]

(Rule 4-502 Repealed Eff. 1/1/08)

4-503 TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING

A petition for appointment of temporary conservator, made in advance of the regularly noticed hearing, must be delivered to the Probate Investigator five calendar days in advance of the ex parte hearing.

(Renumbered eff. 1/1/08. previously amended Rule 4-1202 Eff. 1/1/04)

4-504 SETTING PETITIONS AND ACCOUNTINGS FOR HEARING

The date for hearing a petition which requires a report from the probate investigator shall be no sooner than four (4) weeks after the filing of the petition, except, the hearing date for a conservator's account shall be no sooner than six (6) weeks after filing the account. A copy of a petition which requires a report from the probate investigator shall be submitted to the court investigator at the time the original is filed marked in red in the upper left-hand corner "Investigator's Copy".

4-505 COMPENSATION AND FEES

A. Compensation of Conservator/Guardian

1. Conservator/Guardian of the estate or of the person and estate

A fee will be routinely allowed by the court at the time an annual accounting is filed for services during the preceding twelve month period of three-fourths of 1% of the market value of the assets on the date of the current accounting.

(a) If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased.

(b) A fiduciary who seeks greater compensation must detail in the petition facts that would justify the request. If unusual

services were rendered in more than one category, the services must be separately stated and a value assigned to each.

2. Conservator/Guardian of the person only

A guardian or conservator of the person may at any time obtain an order compensating him or her on an hourly basis, by filing a noticed petition for periodic compensation. If no order has been sought prior to an annual accounting, the guardian or conservator of the estate may include at that time a petition for compensation of the guardian or conservator of the person for services during the preceding accounting period, on an hourly basis. The basis for the requested hourly rate must be set forth. The nature of the tasks and the actual or anticipated hours for the tasks must also be set out. Consideration will be given to the degree of difficulty, the training or experience required, the efficiency and the effectiveness shown or reasonably anticipated, the prevailing market rate for the same or similar tasks and the benefit to the conservatee or ward.

B. Fees of Attorney

The fee usually allowed to the attorney for the preparation, filing, and presentation of the report and order in connection with an annual accounting is:

1. For counsel to a trust company or a professional conservator, an amount equal to one-third of the fiduciary's normal fee, as computed in Section B1, for a twelve month period, or $750.00, whichever is greater;

2. For counsel to a fiduciary who is not a trust company or a professional conservator, an amount equal to one-half of the fiduciary's normal fee, as computed in Section B1, for a twelve month period, or $750.00, whichever is greater. Attorney fees for accountings for periods longer than 12 months will not automatically increase, proportionately or otherwise.

An attorney who seeks greater compensation must detail in the petition the time spent, the difficulty of the services, the results accomplished, and other facts to guide the court in assessing the merit of the request. If more than one category of services was rendered, the services must be separately stated and a value assigned to each.

(Eff. 1/1/08; Renumbered eff. 1/1/08. Previously amended Rule 4-1203, Eff. 1/1/04)

4-506 WAIVER OF ACCOUNTING—WHEN PERMITTED

A minor may not waive an accounting. A minor who has attained majority will be permitted to waive a final accounting except upon a showing of unusual circumstances, and then only if the minor is present in court at the hearing on the petition for termination without an accounting.

(Renumbered eff. 1/1.08. Previously amended Rule 4-1205 Eff. 7/1/98.)

4-507 SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS

A conservator or guardian who has been granted the independent power to sell real property, but who petitions the court for confirmation of sale, will be required to show the same compliance with the publication requirements of Probate Code Section 10300 or 10301 as if the independent power had not been granted.

(Renumbered eff. 1/1/08. Previously amended Rule 4-1207, Eff. 7/1/98.)

4-508 SUBSTITUTED JUDGMENT

A. Court Investigation

A proceeding brought under Article 10, commencing with Section 2580 of the Probate Code, for court order authorizing or requiring a proposed transaction requires investigation by the probate investigator.

B. Documents Which May Have Testamentary Effect

The petition shall be supported by copies of any known documents which may have testamentary effect or which purport to gift any property of the Conservatee before death. Such documents may be submitted with a request and proposed order that they be kept under seal, not to be examined except upon order of the court. The court shall seal any such document for which a request is made by the party submitting the document.

C. "Community Resource Allowance" and "Minimum Monthly M Maintenance Needs Allowance"

The court will not hear petitions, nor issue orders, regarding "Community Resource Allowance" or "Minimum Monthly

Maintenance Needs Allowance" unless such petition is accompanied by points and authorities specifying the jurisdiction and authority of the Probate Court to hear and decide such matters.

D. The Effect upon the Conservatee

The petition shall set forth the circumstances of the Conservatee should the petition be granted, including, but not limited to, assets remaining, the projected needs of the Conservatee and the manner in which those needs will be met.

E. The petition must be accompanied by a request for appointment of a court investigator.

(Renumbered eff. 1/1/08. Previously amended as Rule 4-1211, Eff. 1/1/99)

PART SIX
PARTICULAR TRANSACTIONS

4-601 PROCEEDING FOR PARTICULAR TRANSACTION

Insofar as possible, the requirements of the Probate Code in Article 10, commencing at Section 2580, shall be applied to Proceedings for Particular Transactions under Chapter Three of Part Six of the Probate Code, commencing with Section 3100. The requirements of the Rules for Substituted Judgment in Conservatorships shall apply to Proceedings for Particular Transactions.

(Renumbered eff. 1/1/08. Previously amended as Rule 4-1208, Eff. 1/1/99)

PART SEVEN
GUARDIANSHIP

4-701 THE RULES FOR CONSERVATORSHIP APPLY TO GUARDIANSHIP INSOFAR AS POSSIBLE

(Eff. 1/1/08)

4-702 APPOINTMENT OF GUARDIAN

Note: The court will routinely deny ex-parte applications which will result in a change of custody. Child protective Services of the San Joaquin County Human Services Agency and peace officers have the authority to remove children in an emergency.

A. A petition seeking appointment of a guardian of the person shall be accompanied by the completed local form entitled "CARE PLAN."

B. A petition seeking appointment of a guardian of the person using Judicial Council form GC-210, rather than GC-210(P), shall be accompanied by a declaration explaining why a guardianship is necessary. Local form, "Guardianship: Supporting Declaration" is approved for that purpose.

C. A request for order dispensing notice shall be supported by a declaration setting forth the factual basis for the proposed order. The local form "Attachment 14 to Petitioner for Appointment of Guardian" is approved for that purpose.

D. Completed proposed orders and letters shall be submitted with the petition.

(Eff. 1/1/08)

4-703 APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON

A. A petition seeking the temporary appointment of a guardian before the regularly noticed hearing using Judicial Council form GC-110, rather than GC-110(P), shall be accompanied by a declaration explaining the emergency that requires a guardian be appointed before the regularly noticed hearing. Local form, "Guardianship: Supporting Declaration" is approved for that purpose.

B. An application for ex parte appointment of temporary guardian shall comply with California Rule of Court 3.1203 and 3.1204 for those persons, other than the minor(s), entitled to notice of the petition. The form set forth in these rules for ex parte notice in Family Law matters may be used, Rule 7-100. A declaration establishing compliance with Probate Code Section 2250 is also required.

C. Completed proposed orders and letters shall be submitted with the petition.

(Eff. 1/1/08)

4-800 RESERVED FOR FUTURE USE [REPEALED]

(Rule 4-800 repealed eff. 1/1/08)

4-901 PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME [REPEALED]

(Rule 4-901 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-902 WHEN PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT [REPEALED]

(Rule 4-902 repealed eff. 1/1/08; previously amended eff. 01/01/99)

4-1001 REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION [REPEALED]

(Rule 4-1001 repealed eff. 1/1/08; previously amended eff. 07/01/06)

4-1002 MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION [REPEALED]

(Rule 4-1002 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1003 "RESERVED FOR FUTURE USE [REPEALED]

(Rule 4-1003 repealed eff. 7/1/06; previously amended eff. 7/1/06)

4-1004 REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION [REPEALED]

(Rule 4-1004 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1005 ORDER FOR FINAL DISCHARGE - PROCEDURE TO OBTAIN [REPEALED]

(Rule 4-1005 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1101 REMOVAL OF TRUST FROM COURT JURISDICTION [REPEALED]

(Rule 4-1101 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1102 ACCOUNT [REPEALED]

(Rule 4-1102 repealed eff. 1/1/08; previously amended eff. 07/01/06)

4-1103 "RESERVED FOR FUTURE USE" [REPEALED]

(Rule 4-1103 repealed eff. 7/1/06; previously amended eff. 7/1/06)

4-1104 FEES [REPEALED]

(Rule 4-1104 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1105 REPORT OF TRUSTEE [REPEALED]

(Rule 4-1105 repealed eff. 1/1/08; previously amended eff. 07/01/06)

4-1106 PETITION TO DETERMINE PROPERTY HELD IN TRUST [REPEALED]

(Rule 4-1106 repealed eff. 1/1/08; previously amended eff. 07/01/00)

4-1200 APPOINTMENT OF PROBATE INVESTIGATOR [REPEALED]

(Rule 4-1200 repealed eff. 1/1/08; previously amended eff. 01/01/99)

4-1201 IN GENERAL [REPEALED]

(Rule 4-1201 repealed eff. 1/1/08; previously amended eff. 01/01/04)

4-1202 SETTING PETITIONS AND ACCOUNTINGS FOR HEARING [REPEALED]

(Rule 4-1202 repealed eff. 1/1/08; previously amended eff. 01/01/04)

4-1203 COMPENSATION AND FEES [REPEALED]

(Rule 4-1203 repealed eff. 1/1/08; previously amended eff. 01/01/04)

4-1204 COPY OF ORDER TO COURT INVESTIGATOR [REPEALED]

(Rule 4-1204 repealed eff. 1/1/08; previously amended eff. 01/01/99)

4-1205 WAIVER OF ACCOUNTING—WHEN PERMITTED [REPEALED]

(Rule 4-1205 repealed eff. 1/1/08; previously amended eff. 07/01/05)

4-1206 "RESERVED FOR FUTURE USE" [REPEALED]

(Rule 4-1206 repealed eff. 1/1/08; previously amended eff. 01/01/04)

4-1207 SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS [REPEALED]

(Rule 4-1207 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1208 PROCEEDING FOR PARTICULAR TRANSACTION [REPEALED]

(Rule 4-1208 repealed eff. 1/1/08; previously amended eff. 01/01/99)

4-1209 APPOINTMENT OF GUARDIAN OF THE PERSON [REPEALED]

(Rule 4-1209 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1210 APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON [REPEALED]

(Rule 4-1210 repealed eff. 1/1/08; previously amended eff. 07/01/99)

4-1211 SUBSTITUTED JUDGMENT [REPEALED]

(Rule 4-1211 repealed eff. 1/1/08; previously amended eff. 01/01/99)

4-1300 RESERVED FOR FUTURE USE [REPEALED]

(Rule 4-800 repealed eff. 1/1/08)

4-1401 LATE REQUESTS [REPEALED]

(Rule 4-1401 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1402 DURATION [REPEALED]

(Rule 4-1402 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1403 CONTENTS OF PETITION [REPEALED]

(Rule 4-1403 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1404 ORDER [REPEALED]

(Rule 4-1404 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1501 WHEN ACCOUNTING IS REQUIRED [REPEALED]

(Rule 4-1501 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1502 EX PARTE ORDERS, OR ORDERS SHORTENING TIME OR DISPENSING WITH NOTICE—WHEN

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(Rule 4-1502 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1503 INVENTORY AND APPRAISEMENT [REPEALED]

(Rule 4-1503 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1504 REQUIRED ALLEGATIONS IN PETITION FOR DISTRIBUTION UNDER PROBATE CODE SECTION 11620 [REPEALED]

(Rule 4-1504 repealed eff. 1/1/08; previously amended eff. 07/01/98)

4-1505 REQUIRED FINDING IN ORDER [REPEALED]

(Rule 4-1505 repealed eff. 1/1/08; previously amended eff. 07/01/98)

FORMER RULE 4-1601 RENUMBERED EFF. 1/1/08.

(Rule 4-1601 renumbered as rule 4-209)

4-1601 [REPEALED]

(Rule 4-1601 repealed eff. 1/1/08)

4-1602 PERMISSIBLE ALLEGATIONS AND RELATED PETITIONS [REPEALED]

(Rule 4-1602 repealed eff. 1/1/08; previously amended eff. 07/01/98.)

FORMER RULE 4-1603 RENUMBERED EFF. 1/1/08.

(Rule 4-1603 renumbered as rule 4-208)

4-1603 [REPEALED]

(Rule 4-1603 repealed eff. 1/1/08.)

4-1604 EXTRAORDINARY COMPENSATION NOT AUTHORIZED FOR STATUS REPORTS [REPEALED]

(Rule 4-1604 repealed eff. 1/1/08; previously amended eff. 07/01/98.)

4-1605 NOTICE OF HEARING [REPEALED]

(Rule 4-1605 repealed eff. 1/1/08; previously amended eff. 01/01/99.)

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San Luis Obispo County Probate Rules

Effective January 1, 2010

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CHAPTER 11
CIVIL (PROBATE) RULES

PART ONE
GENERAL PROCEDURAL GUIDE

11.101 APPLICABILITY OF RULES TO ALL PROCEEDINGS

All rules in this Chapter apply to estate proceedings, guardianships, conservatorships, trusts, minor's compromises, special needs trusts, and "trusts funded by court order" under California Rule of Court 7.903, except as otherwise specifically noted except as otherwise specifically noted and to the extent not superseded by laws enacted after July 1, 2000.

(Amended 7/1/09)

11.102 ADDRESSES AND TELEPHONE NUMBERS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
County Government Center
San Luis Obispo, CA 93408

Office	**Address**	**Telephone**
Clerk	County Government Center Room 385 San Luis Obispo, CA 93408	(805) 781-5677
Court Investigator	1120 Mill Street	(805) 781-5424
Probate Examiner	1170 Palm Street	(805) 781-5428
Preapproved Matters	(Recording) (Web Site)	(805) 781-5178 www.slocourts.net

(Amended 1/1/09)

11.103 PROBATE CALENDAR AND APPEARANCES BY COUNSEL

(a) The scheduling of the date and time for the Probate Calendar will be announced by the Court in December for the following year. Please contact the Clerk for further information at (805) 781-5677.

(b) Appearance by counsel will be required in the following matters:

(1) A contested matter;

(2) A hearing on a petition for confirmation of sale of property;

(3) An appointment of guardian or conservator;

(4) A compromise of a minor's claim;

(5) An approval of a special needs trust of other "trust funded by court order" pursuant to California Rule of Court 7.903; and

(6) When otherwise required by law or the Court.

(Amended 1/1/09)

11.104 TIME FOR FILING, SETTINGS, AND FILING FEES

(a) The provision of California Rules of Court, Division II, Civil Law and Motion Rules, Rules 3.1100-3.1312 inclusive are expressly applicable to probate proceedings (including but not limited to law and motion practice therein) in the Superior Court of California, San Luis Obispo County. Particular attention should be paid to the Rules regarding times for filing and service of motion papers (Rule 3.1300) and the necessity of filing points and authorities beyond citation of a jurisdictional provision of the Probate Code (i.e. sections 850 and 17200, etc.) that supports (or opposes) the Petitioner's requested relief.. (California Rule of Court 3.1113). Amended 1/1/09)

(b) All filings must be accompanied by the appropriate filing fee. Fees and exemptions are set forth in Government Code Section 26820 et seq. The words "Probate Code Section 10400" must be inserted in title of each subsequent paper to qualify for fee waiver under Independent Administration of Estates Act. (Government Code Section 26827.4.)

(Amended 1/1/08)

11.105 FORM OF PAPERS PRESENTED FOR FILING

(a) If a petition, order or other document to be filed is one for which the Judicial Council has adopted a mandatory form, the current form must be used. If that form is inadequate in a specific situation, an addendum may be attached. California Rule of Court 7.1.1. Nonconforming pleadings will be rejected by the Clerk. Papers presented for filing with the clerk must also conform to California Rules of Court 2.100 through 2.119 when Judicial Council forms do not exist.

(b) All filings in conservatorships and guardianships must include an original and two (2) copies if petitioner/counsel require a conformed copy. The second copy must go to the Court Investigator's office. Filings in all other types of probate matters must include an original and one (1) copy if petitioner/counsel require a conformed copy.

(c) Unless petitioner/counsel provides the Clerk with a stamped, self-addressed envelope, copies of filed documents will be placed in a will-call pick up folder at the Clerk's office.

(Amended 1/1/09)

11.106 HEARING DATE REQUIRED ON DOCUMENTS

The date, time and department of the hearing must be placed immediately below the case number on the first page of every document filed which relates to a matter set for hearing. Documents which do not conform with this rule will be rejected for filing.

(Amended 7/1/02)

11.107 SIGNING AND VERIFICATION OF PLEADINGS

(Repealed 1/1/05)

11.108 AMENDMENTS TO AND AMENDED PLEADINGS

(Repealed 1/1/05)

11.109 PREAPPROVED MATTERS

(a) A matter that by law may be determined upon verification and without testimony may ordinarily be submitted for appropriate action by the Court without appearance by counsel or witnesses provided. The Judge or Commissioner assigned to the Probate Calendar will review all documents prior to hearing and may tentatively approve all matters which are in proper form and to which no objections have been made. Such matter must be assigned to the pre-approved matter list.

(b) The Probate Clerk is authorized to release the name and numbers of matters preapproved by the court. See Rule 11.102 for the telephone number of the recorded message for pre-approved matters. The recorded message can be assessed 24 hours a day beginning after 12:00 p.m. one (1) court day prior to the scheduled hearing and will include the courtroom and name of the judge who is calling the calendar.

(c) Objection to Approved Matters

If the petitioner does not appear at the time the matter is called, and if objection is made at the time the approved calendar is called, the Court must continue the matter for a reasonable time to allow for the filing of written objections. If written objections are not on file by the new hearing date, the matter will proceed.

(Amended 7/1/02)

11.110 CONTINUANCES

(a) The continuance policy of this Court in probate matters is liberal, but unexplained or unnecessary successive continuances must cause the matter to be taken off calendar and require the same to be re-noticed. In uncontested matters, counsel may request a continuance by telephone to the Probate Clerk. Pursuant to Probate Code §1205, if a hearing is continued, no further notice is required unless ordered by the court.

(b) Matters that require additional time to cure defects identified by the Court or Probate Examiner may be continued for a period sufficient to cure the defect. In the event that the defect is not cured by the continued hearing date, the matter may be ordered off calendar unless there is a personal appearance by counsel with a request to the court for a further continuance.

(Amended 1/1/05

11.111 CONTESTED MATTERS

(a) Oral Objections

If an oral objection to any matter before the Court is made by a person appearing at the hearing at the time a matter is called, the Court may continue the hearing for a reasonable time to allow the filing of written objections. If written objections are not filed within the prescribed time, the matter will proceed to hearing over the objection.

(b) Trial of Contested or Lengthy Matters

(Repealed 1/1/07).

11.112 LAW AND MOTION PROCEDURES

Demurrers and motions for summary judgment filed in probate matters will be set on the appropriate probate judge's Law and Motion Calendar. In addition, petitions requiring lengthy argument or evidence will not be heard on the regular Probate Calendar, but will be scheduled by the Court either on his/her law and motion calendar or on a specifically assigned hearing date. Refer to San Luis Obispo County Local Court Rules, Chapter 7 Civil (Law and Motion) Hearings Procedures and Probate Code Section 1000.

(Amended 1/1/09)

11.113 EX PARTE PROCEDURES

(a) With the exception of a few pro forma matters that do not require a personal appearance by counsel (Order Appointing

Court Investigator (GC-330), Ex Parte Order Regarding Completion of Capacity Declaration-HIPAA (GC-335), Ex Parte Application for an Order to Increase Bond (California Rules of Court 7.204 and 7.207) and the exceptions contained in California Rule of Court 3.1207), the Probate Court will not entertain any ex parte petition that does not comply with California Rules of Court 3.1200 through 3.1206, and is not accompanied by a declaration that makes "an affirmative factual showing… containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." California Rule of Court 3.1202(c).

(b) The court will not entertain ex parte petitions for appointment of any conservator or a guardian unless the required five (5) days notice has been given (Probate Code sections 2250(e) and 2250.2 through 2250.6), or the petitioner has shown both irreparable harm or immediate danger, and "good cause" for waiving the notice requirements.

(c) Counsel requesting the waiver or shortening of any notice time periods prescribed by the Probate Code must submit a Declaration of Due Diligence to the Court citing the specific notice provision at issue, setting forth facts relating to the efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice; and explaining the "good cause" for waiving or shortening the time.

(d) A party seeking an ex parte order must submit the application and all supporting papers and fees to the Clerk for filing no later than 2:00 p.m. on the day preceding the hearing. The Clerk may reject Petitions that do not comply with subsections (a) through (c) above.

(e) An ex parte order will not be granted unless accompanied by a verified petition (or a sworn declaration where applicable) containing facts and law to justify granting the requested relief.

(f) Ex parte petitions filed in decedent's estates for the sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition.

(Amended 1/1/09)

PART TWO
NOTICES

11.201 PREPARATION OF NOTICES

All notices required by the Probate Code to be given by the Clerk must be prepared by the attorney.

(Amended 7/1/02)

11.202 ADDITIONAL NOTICE

Under the provisions of Probate Code Section 1202, the Court may require additional or further notice on any matter. Such notice will be required whenever it appears that the interest of any person may be adversely affected by the determination of the issues raised by the pleadings.

11.203 NOTICE: BY WHOM GIVEN

The Clerk must be responsible for publication of notice where required. The petitioner or the petitioner's attorney must prepare all notices required to be published and must provide the same by original and one (1) copy to the Clerk. Where notice by mail is required to be given, petitioner or petitioner's attorney must give the matter the notice and file a proper proof of service.

(Amended 7/1/02)

11.204 NOTICE BY PUBLICATION OF NOTICE OF PETITION TO ADMINISTER ESTATE

See Appendix A for newspapers of general circulation in San Luis Obispo County.

(Amended 1/1/05)

11.205 NOTICE BY POSTING

The moving party must prepare and submit to the Clerk as many copies of the notice as the Clerk is required to post.

PART THREE
APPOINTMENT OF EXECUTORS AND ADMINISTRATOR

11.301 DECLINATION TO SERVE

If the person named in the decedent's will as executor declines to act as such, his written and signed declination to act must be filed with the Court unless evidence is produced that he is incompetent or refuses to act.

(Amended 7/1/02)

11.302 MULTIPLE REPRESENTATIVES

If a petition is filed requesting letters be issued to two or more executors or administrators in which one or more of the named persons for whom letters are sought is not a petitioner, a consent to act, signed by each non-petitioning person for whom letters is sought, must be filed with the Court.

(Amended 7/1/02)

11.303 INDIVIDUALS TO BE NAMED IN THE PETITION

In the petition for letters, each of the following must be listed and named:

(a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner, (including those who might be heirs by virtue of Probate Code Sections 21114, 21115 and 6400 et seq.), setting forth their names, age addresses and relationships to the decedent.

(b) Each devisee and executor named in any will being offered for probate even if the gift to such person or the appointment of such executor has apparently been revoked.

(c) Trust beneficiaries, the trustee of a trust or guardian nominated in a will, and any other known trustee or guardian.

(d) If the decedent left no spouse or issue, the heirs of a predeceased spouse who would inherit as provided by Probate Code § 6400 et seq.

(e) If an individual identified in the petition for letters is deceased, the petition must set forth the date of death of that individual.

(Amended 1/1/05)

11.304 COPY OF WILL TO BE ATTACHED TO PETITION FOR PROBATE

(a) A petition for letters must have an attested copy of the will attached at the time of filing the petition. The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping.

(b) If the will is holographic, in addition to a photocopy, a typewritten copy of the will must also be attached to the petition.

(Amended 1/1/05)

11.305 PROOF OF WILL

(a) Unless there is a contest of a will, proof of a will must conform to the requirements of Probate Code Section 8220 et seq.

(b) In uncontested will proceedings, if the attestation clause is signed under penalty of perjury and meets the requirements of Probate Code Section 6110 et seq., the will is self proving and may be admitted to probate without an affidavit or declaration. Otherwise, if the will or codicil is witnessed, the moving party must file a Proof of Subscribing Witness with a copy of the will or codicil attached.

(c) If the testimony of a subscribing witness to a will or any other witness impeaches the due execution of the will, a continuance will be ordered; and the other subscribing witness or witnesses to the will who can with due diligence be found must be subpoenaed by the proponent to appear before the Court at the continuance date and testify respecting the execution of the will.

(d) The Court prefers that both formal witnessed wills and holographic wills be proven by declaration rather than by testimony.

(Eff. 7/1/00)

11.306 BOND

(a) Bond must be obtained in all cases, except as otherwise provided by statute. (Probate Code § 8480 and 8481(a)(1)).

(b) If a verified petition for letters alleges that all beneficiaries or heirs have waived the filing of a bond, and the petitioner requests appointment without bond, such waiver(s) must be in writing and timely filed prior to the hearing. Waiver of the bond by heir(s) or beneficiary(s) pursuant to Probate Code § 8481(a)(2) will be considered by the Court and permitted on a case by case basis.

(c) When a reduction of bond proceeding is initiated, counsel must obtain a proof of deposit confirming the deposit of securities and/or money subject to removal from the depository only upon order of the Court. Such proof must be filed with the Clerk before the reduced bond is filed. Judicial Council forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at www.courtinfo.ca.gov.

(Amended 1/1/05)

(d) Counsel should be cognizant of their duty to increase bond when required to do so under California Rule of Court 7.204.

11.307 FORM REQUIRED FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

The Judicial Council has adopted a form entitled "DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE." Before letters are issued, the original form, signed by the personal representative stating that he or she had received and read the same, must be filed with the Court by the personal representative, other than a trust company or a public administrator Probate Code Section 8404.

(Eff. 7/1/00)

11.308 PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

(a) A petition for appointment of a special administrator may be granted by the Court pursuant to Probate Code section 8540. Letters of Special Administration should be sought ex parte only if the petition can fulfill the requirements of California Rules of Court 3.1200 through 3.1206 and Local Rule 11.113, ante. Moreover, all interested parties must be notified no later than 10:00 a.m. the court day before the ex parte appearance. The petitioner must contact the Clerk's Office to set a hearing. Ex parte applications must be made in compliance with California Rules of Court 3.1200 through 3.1206. See Local Rule 11.113(c).

(b) The party seeking Letters of Special Administration must give notice of the application to the surviving spouse, the person(s) nominated as executor(s), other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice, unless on good cause shown the Court orders otherwise. The petitioner also must file a petition for permanent letters before special letters of administration must be issued, or there appears in the petition a showing of good cause why a petition for permanent letters has not been filed.

(c) In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If it appears that a bona fide contest exists, the Court will consider the advisability of appointing the public administrator or a neutral person or corporation as special administrator.

(Amended 7/1/02)

11.309 ANCILLARY PROBATE

(a) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation, the will may be probated in an ancillary administration proceeding brought under Probate Code Section 12510 et seq.

(b) A petition to probate a foreign will must have attached a certified copy of the will and a certified copy of the order or decree admitting the will to probate outside this jurisdiction. If the will has been admitted to probate in a foreign country, the copies must be certified in the manner set forth in Section 1530 of the Evidence Code.

(Eff. 7/1/00)

PART FOUR
OTHER MOTIONS AND PETITIONS

11.401 PETITION FOR EX PARTE ORDER

(Repealed 1/1/09)

11.402 PETITION FOR INSTRUCTIONS

(a) The use of a Petition for Instructions by personal representatives pursuant to Probate Code Section 9611, is limited to those matters where no other or different procedure is provided by statute.

(b) The Petition for Instructions should set forth the matter on which the personal representative desires instructions in precise detail. The petition must be accompanied by a proposed order which set forth the instructions in clear and explicit language.

11.403 FAMILY ALLOWANCE

(a) Requests for a family allowance should be made in a timely fashion and conform with the requirements of Probate Code Section 6540 et seq. Ex parte petitions for a family allowance for the benefit of the surviving spouse and/or minor children will be accepted if presented before the filing of the Inventory. Ex parte petitions from a person other than the personal representative will not be accepted without the written consent of the personal representative.

(b) A Petition for Family Allowance made more than six (6) months after the personal representative has qualified must be noticed and placed on the regular probate calendar. A Petition for Family Allowance for the benefit of persons other than the surviving spouse and/or minor children will be heard on the regular probate calendar after notice has been given pursuant to Probate Code Section 6541(c).

(c) The duration of an order for family allowance must not exceed six (6) months. For good cause shown in writing, such orders may be renewed. The order must state the commencement date and the specified period of payments.

(d) The application for an allowance must include at least the following data:

(1) The applicant's expenses and income from sources outside the estate;

(2) An itemized list of the applicant's assets, and a statement of the appropriate value of each;

(3) A general statement of the assets and of the liabilities of the estate;

(4) A general statement of other applications (if any) on file for allowances; and

(5) If the petitioner is someone other than the personal representative, the petition must be accompanied by either a consent to the allowance or a waiver of notice signed by the personal representative.

(Amended 7/1/02)

11.404 PETITION FOR DISTRIBUTION ENTITLEMENT

Petition to determine entitlement to distribution of any part of an estate must be made in conformance with the requirements of Probate Code Section 11700 et seq. Notice must be given in the manner prescribed in Probate Code Section 11701.

(Amended 7/1/02)

11.405 PROCEEDING FOR SPOUSAL PROPERTY TRANSACTION

As to petitions pursuant to §3100 et seq.:

(a) The petition must be supported by a declaration of a licensed physician or licensed psychologist within the scope of his or her licensure as to the capacity of the non-petitioning spouse (§810 et seq.).

(b) Counsel will be appointed for the nonpetitioning spouse if the petition proposes a substantial transfer to the petitioner.

(c) When the petition is predicated upon the nonpetitioning spouse's qualification for Medi-Cal benefits, notice shall also be given to the Director of the California Department of Health Services.

(d) In petitions to transfer assets, related to Medi-Cal eligibility, the petitioner shall provide the court with schedules showing such calculations as would be required in an administrative hearing to the extent that the Community Spouse Resource Allowance or the Minimum Monthly Maintenance Needs Allowance would be in issue. The court will not make orders modifying the Community Spouse Resource Allowance nor the Minimum Maintenance Monthly Needs Allowance but may make findings as to the proper amounts as needed to support the order.

(e) The court will not issue general support orders in petitions under §3100 et seq.

(Eff. 1/1/05)

PART FIVE
ORDERS

11.501 PREPARATION OF ORDERS

For an order to be included in the file for signature at the time of the hearing, it must be submitted to the Clerk at the time the petition is submitted, or no later than five (5) court days prior to the hearing. An order not presented for signature at time of the hearing must be presented within five (5) days thereafter and must include in the caption and in the first paragraph a recitation of the date, time and department of the hearing.

(Amended 7/1/02)

11.502 WORDING

Orders must be worded so that their general effect may be determined without reference to the petition on which they are based. All orders must be complete in themselves. All matters actually passed on by the Court, including the relief granted, the names of persons and description of property (and if real property is involved, the legal description and common address thereof), amount of money affected, the terms of trusts, and the provisions of other agreements, must be set forth with the same particularity required of judgments in civil matters.

(Amended 7/1/02)

11.503 CONTINUING PAYMENTS—TIME LIMIT

The Court does not favor orders for continuing payments to run until the further order of the Court. All such orders must provide that payments commence as of a particular date and continue to a date certain.

(Amended 7/1/02)

11.504 ORDERS CORRECTING CLERICAL ERRORS

If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the Court, the Court will on motion, which normally must be supported by an affidavit or declaration, make an order correcting the mistake. The nunc pro tunc order should not take the form of a complete amended order but should be substantially in the following form: "Upon consideration of the affidavit or declaration of , to correct a clerical error, the _____ (title of the order to be corrected, giving the date thereof) is corrected on the Court's own motion by striking the following: "_____" and inserting in lieu thereof: "_____". The original order must not be physically changed by the Clerk, but must be used in connection with the nunc pro tunc order correcting it. To prevent further errors, not less than a complete clause or sentence should be stricken, even if it is intended to correct one word or figure.

(Amended 7/1/02)

11.505 ORDER SHORTENING OR DISPENSING WITH NOTICE

A form Order Dispensing with Notice (GC-021) or an Order Prescribing Notice (GC-022) must be submitted to the Court before the petition is filed. The proposed order must be accompanied by a Declaration of Due Diligence explaining in detail the efforts made to effect service, and specific factual reasons supporting the request for the order. See California Rules of Court 7.1012 and 7.1062. The proposed order must also be accompanied by points and authorities in support of the order. If the particular Probate Code provision governing notice provides that the time for giving notice cannot be shortened, the Court cannot and will not shorten the time. Probate Code § 1203(a).

PART SIX
INVENTORY AND APPRAISAL

11.601 INVENTORY AND APPRAISAL—PERIOD TO FILE

(a) In decedent's estates: Probate Code Section 8800(b) requires that the Inventory and Appraisal must be filed within four (4) months after Letters are issued to a personal representative, or within such further time as the court may allow after a showing of good cause. If the personal representative neglects or refuses to file the Inventory and Appraisal within the time prescribed, the Court may revoke the personal representative's Letters and may impose personal liability upon the personal representative, including attorney's fees. Probate Code Section 8804. The Inventory and Appraisal must contain a statement that shows that the

bond is sufficient. California Rule of Court 7.501.

(b) In guardianships and conservatorships: Probate Code § 2610(a) requires that the Inventory and Appraisal must be filed within 90 days after the court signs the order appointing the guardian or conservator, or within such further time as the court may allow after a showing of good cause. If the guardian or conservator fails or refuses to file the Inventory and Appraisal within the time prescribed, the court may remove the guardian or conservator, revoke their Letters, and may impose personal liability upon them. Probate Code §§ 2614.5 and 2615. The Inventory and Appraisal must contain a statement that shows that the bond is sufficient. California Rule of Court 7.501. After-acquired or newly discovered property must be inventoried and appraised in compliance with Probate Code § 2613.

(Amended 1/1/09)

11.602 STATEMENT REGARDING—BOND ON INVENTORY AND APPRAISAL

(Repealed 1/1/05)

11.603 GUIDE FOR PREPARATION OF INVENTORY AND APPRAISAL

The Inventory and Appraisal must conform to the requirements of Probate Code Sections 8850, 8852 and Section 8900 et seq. Each inventory item must be clearly and concisely described in the manner described in the current version of the Probate Referees' Procedures Guide published by the California Probate Referees' Association. In the case of real property, the full legal description and common address must be included.

11.604 PROPERTY TAX CERTIFICATION

Pursuant to Probate Code Section 8800(d), the personal representative must comply with the requirements of Revenue and Taxation Code Section 480. This must be satisfied by completing the Property Tax Certification section on the Inventory and Appraisal, or, by completing the Judicial Council Property Tax Certification form.

PART SEVEN
CREDITORS CLAIMS

11.701 NOTICE TO CREDITORS

If, within four (4) months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative must give notice of administration of the estate to the creditor. Probate Code § 9050. The notice must be completed on the form approved by the Judicial Council and if filed with the Court, must include a cover sheet in conformance with the Calif. Rules of Court Rule 3.715.

(Amended 1/1/09)

11.702 FORM OF CLAIM

Claims must be submitted on the form approved by the Judicial Council. Pursuant to Probate Code Section 9150(b), the claimant must file the original claim with the Court and mail the personal representative a copy.

11.703 REQUIRED ACTION

(Repealed 1/1/05)

11.704 LISTING OF CREDITORS' CLAIMS

(Repealed 1/1/05)

PART EIGHT
SALES

11.801 SALE OR ENCUMBRANCE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

No specifically devised or bequeathed real property must be encumbered or offered for sale unless first approved by the Court after not less than fifteen (15) days notice to the specific devisee, or unless the consent of the devisee is on file.

11.802 APPRAISAL OF REAL PROPERTY WITHIN ONE YEAR

Real property must have been appraised within one year of the time of sale. Since the first appraisal reflects the value at the time of death of the decedent, if the date of death is more than one year prior to the date of sale, a reappraisal for sale is required. Probate Code Section 10309(a)(1).

11.803 PUBLISHED NOTICE OF INTENTION TO SELL REAL PROPERTY

Unless excused by the provisions of Probate Code Section 10300, a publication of notice of intention to sell real property of the estate is required.

11.804 DESCRIPTION OF PROPERTY

All legal notices for the sale of real property and the petition for confirmation of sale must contain, in addition to the legal description, the common street address of the property. If there is no common street address, some indication of the location of the property must be included.

11.805 EXCLUSIVE RIGHT TO SELL REAL PROPERTY

If the personal representative does not have powers granted under the Independent Administration of Estates Act, the personal representative may apply for Court authority to grant a real estate broker an exclusive right to sell the estate's real property for limited periods of time. Probate Code Section 10150. The court may grant the petition upon proof of necessity or advantage to the estate. A copy of the proposed agreement with the broker must be attached to the petition. Said agreement must provide for the payment of a commission to the broker holding the listing upon court approval. Probate Code Section 10160 et seq.

11.806 CONFIRMATION OF SALE

Petitions to confirm sales of real property must be on the Judicial Council approved forms.

11.807 PRESENCE OF PURCHASER NAMED IN PETITION AT CONFIRMATION

(a) A sale to the increased bidder in Court could be set aside by the original purchaser who was justified in believing he did not have to appear in Court to protect his purchase. Counsel should inform the original purchaser of the time and place of hearing and advise him or his agent to be in Court on the day of sale.

(b) The original purchaser, or his/her agent if the original purchaser's address is not known, must be given notice of the petition to confirm sale of real property and proof of service of same must be filed with the Court prior to the date of confirmation of sale.

11.808 DEPOSIT TO ACCOMPANY OVERBID AND OVERBID FORMS

(a) No bid for the purchase of real property will be acceptable unless the personal representative or the attorney for the estate informs the Court that the bid is acceptable.

(b) When an overbid is made in Court, the overbidder must submit to the Court, at the hearing at the time the overbid is made, a certified or cashier's check, in an amount equal to ten (10) percent of the first allowable minimum overbid, or such lesser amount as the personal representative shall approve.

(c) When there is a successful overbid in open Court on a sale of real property, counsel must complete, and the successful bidder must sign, an overbid form which is available from the courtroom clerk and may be handwritten in this circumstance, and file the same. The Order Confirming Sale of Real Property will not be signed unless the form is filed.

11.809 CONDITIONAL SALES OF REAL PROPERTY

The Court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail, the Court may approve such a sale.

11.810 SALES OF REAL PROPERTY WHEN BUYER ASSUMES ENCUMBRANCE

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement and any contingent liability.

11.811 BOND ON SALE OF REAL PROPERTY

(Repealed 1/1/05)

11.812 BROKER'S COMMISSION ON SALE OF REAL PROPERTY

(a) Upon the confirmation of the sale of real property, a broker's commission in excess of 6 percent of the gross sales price will not be allowed except in unusual cases when a larger commission is justified because of exceptional circumstances.

(b) A broker bidding for his own account is not entitled to receive or share in a commission.

(c) In overbid situations, broker's commissions must be determined in accordance with Probate Code Section 10160 et seq.

11.813 PERSONAL PROPERTY - APPRAISAL BEFORE SALE

Except in the case of perishable property or depreciating property, sales of personal property will not ordinarily be approved or confirmed unless the property has been appraised. When necessary, a partial inventory and appraisal may be filed for this purpose, or a letter appraisal obtained from the probate referee for the estate wherein he states that he has inspected the property and declares its value.

PART NINE
ACCOUNTS AND REPORTS

11.901 ACCOUNTINGS

(a) Form of Account All accounts filed in probate proceedings, including estates, guardianships, conservatorships, special needs trusts and trust accounts must conform to the requirements of Probate Code § 1060 et seq. and 10900. Accounts must be typewritten or machine printed on letter sized pages numbered at the bottom of each page and meet the requirements provided in Chapter 4 (commencing with Section 1060 of Division 3, Part 1 of the Probate Code).

(b) Summary of Account Each account must state the period covered by the accounting, and contain a summary as set forth in Probate Code § 1061 et seq.

(1) Appendix B is a suggested Form of Summary of Account showing principal and income breakdowns as required if making a distribution to a trust.

(c) Accounts of Personal Representatives All accounts of personal representatives must conform to the requirements set forth in Probate Code Sections 1060 et seq. and 10900 and, as nearly as possible, in the forms suggested in Chapter 19 of California Decedent Estate Practice. (CEB)

(d) Filing of Submission of Accounts Accountings done in probate estates and trusts should be filed with the Clerk of the Court, Room 385 of the San Luis Obispo Courthouse. Accountings done in guardianships, conservatorships and special needs trusts should be submitted at the reception desk for the Court Investigators at 1120 Mill Street, Suite A, San Luis Obispo, CA.

(Amended 1/1/09)

11.902 TRUST AND SPECIFICALLY DEVISED PROPERTY

(a) If a part of the estate is distributable to a trustee with income accumulated during administration of the estate payable by the trustee to trust beneficiaries, receipts and disbursements during probate should be allocated between principal and income in the account.

(b) If property is specifically devised, the accounting should set forth both income received and expenses allocable to each such item of property separately so the net income or loss allocable to each specific devise can be ascertained. See Probate Code Section 12001 et seq.

11.903 WAIVER OF ACCOUNT

(Repealed 1/1/05)

11.904 VOUCHERS

Vouchers supporting accounts are not to be filed with the Clerk unless the Court orders them filed.

PART TEN
FEES AND COSTS

11.1001 FEES AND COMMISSIONS IN GENERAL

(a) In General: All fees, commissions and compensation awarded to fiduciaries and their attorneys must be just and reasonable in amount. The Court will determine what is just and reasonable based upon the information that is required to be provided to the Court by California Rule of Court 7.702.

(Amended 1/1/09)

(b) The Court will consider, but not be bound by, an agreement for fees for extraordinary services between the attorney and the client.

(Amended 1/1/05)

(c) Statutory Compensation and Fees in Decedent's Estates: Those services described in Appendix D are "ordinary services" performed by a personal representative and/or an attorney in connection with a decedent's estate. The compensation prescribed by Probate Code § 10810 is intended to compensate for all of these services. No "extraordinary compensation" will be paid for performance of these services.

(d) Extraordinary Compensation and Fees in Decedent's Estates: A petition for extraordinary compensation must contain the information required by California Rule of Court 7.702. California Rule of Court 7.703 lists some types of activities which may serve as the basis for a request for extraordinary compensation.

11.1002 FEES AND COMMISSIONS IN ADVANCE

(a) Decedent's Estates

A petition for partial allowance on compensation for extraordinary services, filed prior to the petition for final distribution, must be consistent with the requirements set forth for statutory fees in California Rule of Probate Court 7.701. Ordinarily the last twenty-five (25) percent of statutory compensation and/or compensation for extraordinary services will not be allowed prior to approval of the final accounting; however, upon a proper showing that it would be beneficial to the estate or to the distribution (for example, reduction of income taxes in a given fiscal period), the twenty-five (25) percent reserve may be reduced or dispensed with.

(b) Guardianships and Conservatorships Fees of guardians and conservators and their attorneys must be paid after the services have been performed to which they relate and require prior court approval upon a petition filed. Probate Code Section 2640 et seq. (See Rule 11.1006) Periodic payment of fees or commissions may be made only upon prior Court approval given upon a petition filed under Probate Code Section 2643. The periodic payments must only be paid after the services have been performed for which the fees were requested.

(c) Trusts Fees of trustees and their attorneys must be paid after the services have been performed to which they relate, and upon showing of good cause, periodic compensation as the Court shall fix. Probate Code 15682.

(Amended 1/1/05)

11.1003 FEES AND COMMISSIONS DECEDENT'S ESTATES

Statutory fees and commissions will not be allowed for services rendered with respect to assets not subject to probate such as life insurance proceeds or annuities paid to a named person, or termination of life estates or joint tenancy.

(Amended 1/1/2005)

11.1004 ORDINARY SERVICES COMPENSATED BY STATUTORY FEES

The Court views those services set forth in Appendix D as ordinary services for conducting probate proceedings by the personal representative and the attorney for which no extraordinary fee will be allowed.

11.1005 EXTRAORDINARY FEES AND COMMISSIONS IN ESTATES

(Repealed 1/1/05)

11.1006 COMPENSATION IN GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS

(a) No petition for fees will be considered until the Inventory and Appraisal has been filed.

(b) The additional powers granted to a conservator or guardian under Probate Code Section 2591(q) do not confer authority for the conservator or guardian to pay fees to their attorney of record without first obtaining prior court approval.

(Amended 1/1/05)

11.1007 "ONE-FEE" RULE

(Repealed 1/1/05)

11.1008 NOTICE TO PRIOR REPRESENTATIVE OR ATTORNEY

(Repealed 1/1/05)

11.1009 REIMBURSEMENT FOR COSTS ADVANCED

If counsel or the fiduciary seek reimbursement for costs, such costs must be itemized in the petition.

PART ELEVEN
DISTRIBUTION AND DISCHARGE

11.1101 PETITION OR STATUS REPORT REQUIRED—FILING TIME

Within one year from the date of issuance of letters in estates not required to file a federal estate tax return and within 18 months from the date of issuance of letters in estates where such return is required, the personal representative must either petition for final distribution of the estate or file a verified report of status of administration. If a report is filed, it must show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate. Probate Code Section 12201.

11.1102 REQUIRED ALLEGATIONS IN PETITION FOR PRELIMINARY AND FINAL DISTRIBUTION

In addition to other items required by law, a petition for preliminary and final distribution must contain the following:

(a) A full and complete description of all assets on hand, including the legal description and common address of real property. The descriptions may either be set forth in the body of the petition, or by an attached schedule incorporated by reference.

(b) An allegation as to the character of the property, whether separate or community, in all cases where its character may affect distribution.

(c) Facts specifically showing the entitlement of each recipient to the portion of the estate to be distributed to him or her. This must also include information concerning predeceased children and in the case of intestate succession, a list of heirs to permit the Court to determine if the laws of intestate succession have been properly applied. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient.

(d) The name of each distributee. State whether the distributee is an adult or minor. If the distributee is a minor, the age and date of birth must also be listed and a guardian, trustee, custodian or parent identified.

(e) A computation of attorney's fees and personal representative's commissions requested, or a statement of the waiver of such compensation. In addition to the rules set forth above, a petition for final distribution must contain the following:

(i) A schedule of claims showing the name of the claimant, the amount claimed, the date presented, the date allowed, the date paid if the claim has been paid and the amount paid. If any claim has been rejected, the date of service of notice of rejection of claim, if such notice was given, must be stated; and any known suit on the rejected claim must be identified.

(ii) An itemization of costs unless itemized in the final accounting.

(iii) A statement that the federal estate tax has been paid, or that the estate is too small to require payment of tax, or that installment payments have been provided for under IRS 6166. When proration of the federal estate tax is applicable, the accompanying account should include a schedule indicating the method by which the proration has been computed.

(iv) A statement that decedent had not received health care under provisions set forth in Probate Code Section 9202; or a statement that (1) decedent had received such health care, (2) notice of decedent's death was given to the Director of Health Services in the manner and within the time required by Probate Code Section 9202, and (3) more than 4 months have elapsed since said notice was given, and that either no claim was filed by the Director during that period, or that the claim which the

Director full and a dismissal of claim is on file.

(v) If interest or income accruing during administration is distributable pursuant to Probate Code Section 12000 et seq., a statement of the amount due and the method of calculation. See Rule 11.902.

(f) An allegation disclosing the existence or non-existence of any family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during the account period as required by Probate Code §1064(a)(4).

(Amended 1/1/05)

11.1103 DISTRIBUTION TO MINORS

(a) If the decedent's will permits or if the sum does not exceed $20,000, and the Court determines that it would be in the best interest of the minor, the Court can order the distribution to a custodian for the benefit of the minor under the Uniform Transfer to Minors Act. Probate Code §§ 3900-3925.

(b) The court may permit distribution of personal property to a parent of a minor if the total estate of the minor, including the money and other property to be paid or delivered to the parent, does not exceed $5,000 in value. See Probate Code Section 3400. The written assurance required by Probate Code Section 3401 must be filed prior to the signing of the Order. The Order must indicate that the distribution is made pursuant to Probate Code Section 3401.

(c) If neither (a) nor (b) above applies, the Court must appoint a Guardian of the minor's estate to receive the distribution. If the sole asset of the guardianship is money (and not securities), real property, a note, or any other asset where the value of the principal could diminish), the Court may be able to later terminate the guardianship under the circumstances in Probate Code § 3412(a).

11.1104 DISTRIBUTION TO NONRESIDENT BENEFICIARIES

If a distribution is to be made to a non-resident beneficiary, and if the assets of the estate exceed $1,000,000 and more than $250,000 is to be distributed to a non-resident beneficiary, the certificate of the California Franchise Tax Board required by §19513 of the Revenue and Taxation Code must be filed before the order of distribution will be signed.

(Amended 1/1/05)

11.1105 DISTRIBUTION TO A TRUST

(a) If a distribution is to made to a trust, a statement by the trustee of trustee's willingness to accept the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be accompanied by a petition by the personal representative for the appointment of a substitute trustee.

(b) If the will provides for distribution of the estate, or portion thereof, to a trust created by the will, the trust provisions set forth in the will must be set forth verbatim in the petition and order for distribution, whether or not an accounting is made.

(Amended 1/1/05)

11.1106 DISTRIBUTION TO AN ASSIGNEE

If distribution is to be made pursuant to an assignment of interest, the Court may on the motion of any person interested in the estate or on the motion of the public administrator or on its own motion inquire into the consideration for such assignment and into the circumstances surrounding the execution of such assignment. The signature of the assignor must be acknowledged.

11.1107 DISTRIBUTION PURSUANT TO AGREEMENT

If the distributees seek distribution in a manner other than that provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement (signed by all involved distributees with signatures acknowledged before a notary public) must be filed. If any such distributee is a minor or is under disability, the agreement must be signed by the minor's legal guardian. Either earlier Court approval of the agreement in the guardianship proceeding must be proved in the probate proceeding or a petition for approval of the agreement in both the guardianship proceeding and the probate proceeding must be brought on for hearing at the same time.

11.1108 PRELIMINARY DISTRIBUTION - BOND

If a preliminary distribution is made before four months have elapsed after letters are first issued, the Court must require that the

distributees post a bond. Probate Code Section 11622. After such four month period has elapsed, the Court may require a distributee's bond in the amount the Court orders.

11.1109 PROCEDURE FOR OBTAINING AN ORDER FOR FINAL DISCHARGE

To obtain a final discharge for the personal representative, the following documents must be presented to the Clerk: all receipts of distributees, an affidavit for final discharge signed by the personal representative and an order of discharge obtained pursuant to the provisions of Probate Code Section 12250 or Section 12251.

PART TWELVE
ESTABLISHING FACT OF DEATH

11.1201 PROCEEDINGS TO ESTABLISH DEATH

(a) A verified petition to establish the fact of death must be filed in the name of the deceased person. Probate Code Sections 200-204.

(b) The order can be obtained ex parte if the petition is accompanied by:

(1) An affidavit by petitioner that petitioner has no reason to believe that there is any opposition to, or contest of the petition;

(2) The proposed order. Filings not accompanied by these documents must be set for hearing.

(c) There is no provision in the code for attorneys' fees in proceedings to establish fact of death. No request for attorney fees must be included in the petition, and if so included, will be disallowed.

PART THIRTEEN
PETITIONS SETTING ASIDE ESTATES, PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE, AND COLLECTION OF SMALL ESTATES

11.1301 PETITION TO SET ASIDE UNDER PROBATE CODE SECS. 6600-6613

A petition to set aside a decedent's estate (net value under $20,000) under Probate Code Section 6600 et seq., must be filed in the proceedings for the administration of the decedent's estate. If such proceedings have not commenced, a petition to set aside may be filed concurrently with the petition for letters, or if no petition is being filed, a petition may be filed independently.

11.1302 PETITION RELATING TO PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE

(a) If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property. In addition to the allegations required by Probate Code §13651, the following information should be included in the spousal property petition:

(1) Date and place of marriage;

(2) Ownership of any real and personal property on date of marriage and a description and approximation of values;

(3) Decedent's net worth at time of marriage;

(4) Decedent's occupation at time of marriage;

(5) A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;

(6) The identification of any property described in 2 or 5 above which is still a part of this estate;

(7) A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and

(8) Any additional facts upon which the claim that property is community or quasicommunity property is based.

(Amended 1/1/05)

11.1303 PROCEDURE FOR COLLECTION OF SMALL ESTATES

(a) The basis for collection of small estates not exceeding $100,000 is set out in Probate Code Section 13100 et seq. (personal

property) and Section 13150 et seq. (real property). The basis for collection of an interest in decedent's real property that does not exceed $20,000 is set forth in Probate Code Section 13200 et seq.

(b) With respect to succession to real property for estates of decedents not exceeding $100,000 under Probate Code Section 13150 et seq., the successor of the decedent to an interest in real property must file a petition requesting an order determining that the petitioner has succeeded to the real property and that administration is unnecessary. Such petition must be on forms approved by the Judicial Council.

PART FOURTEEN
INDEPENDENT ADMINISTRATION

11.1401 GENERAL

With respect to matters transacted pursuant to the provisions of the Independent Administration of Estates Act contained in Probate Code §10400 et seq., the following policies must apply:

(1) In any petition for distribution, a schedule of claims must be included as part of the petition, the name of the claimant, the amount claimed, the date presented, the date allowed, the date paid if the claim has been paid and the amount paid must be set forth. If any claim has been rejected, the date of service of notice of rejection of claim, if such notice was given, must be stated; and any known suit on the rejected claim must be identified.

(2) Although preliminary distribution may be made without accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent.

(3) In any petition for distribution, all independent acts taken without prior Court approval must be set forth and described with particularity, and an allegation made that the 15-day notice of proposed action with attached notice of proposed action and proof of service must be filed with the Court. The petition for distribution must indicate whether or not objections or consents to the proposed action were served. If certain acts have been properly reported in a prior distribution, they need not be repeated.

(Amended 1/1/05)

11.1402 NOTICE AND PUBLICATION REQUIREMENTS

If the request for authority to administer the estate under the Independent Administration of Estates Act is made by separate petition, notice must be given in the same manner set forth in Probate Code Section 10451.

PART FIFTEEN
TRUSTS

11.1501 COURT JURISDICTION

(a) The Court has exclusive jurisdiction over the internal affairs of trusts, and has concurrent jurisdiction of (i) actions and proceedings to determine the existence of trusts, (ii) actions and proceedings by or against creditors or debtors of trusts, and (iii) other actions and proceedings involving trustees and third persons. Probate Code Section 17000.

(b) Proceedings concerning the internal affairs of trusts are set forth in Probate Code Section 17200.

(c) A copy of the trust must be an attachment to a Petition for Instructions under Probate Code Section 1700 et seq. and should not be filed as a separate exhibit.

11.1502 CONTINUING JURISDICTION

A trust created by a will is not subject to the continuing jurisdiction of the Court, unless:

(1) The testator provides otherwise, or

(2) The trust was created by a will executed before July 1, 1977, and not incorporated in a will or after July 1, 1977 and the trust has not been removed from continuing court jurisdiction. Probate Code Section 17300(a) and 17303. If the trustee is not a trust company, Probate Code Section 17352 provides that a pre-July 1, 1977 testamentary trust may be removed from continuing jurisdiction upon a petition filed pursuant to that section. If the petition is granted, the Court may impose such conditions including a bond, as it deems necessary. If a trustee is a trust company, a testamentary trust must be removed from continuing jurisdiction pursuant to Probate Code Section 17351.

11.1503 TRUSTEES' ACCOUNTS

(Repealed 1/1/05)

11.1504 BENEFICIARIES TO BE LISTED IN PETITION

(Repealed 1/1/05)

11.1505 NOTICE TO BENEFICIARIES

(Repealed 1/1/05)

11.1506 TRUSTS ESTABLISHED BEFORE DECREE OF DISTRIBUTION

(a) The Clerk must issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the Court file shows the incumbency of the trustee, upon the trustee accepting its duties and responsibilities as such trustee and making application to the Clerk for such certificate and paying the appropriate fees. Probate Code Section 15603

(b) The trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon filing of an appropriate petition.

(c) Where a vacancy exists, a trustee not named in the will admitted to probate may be appointed upon the filing of a petition under Probate Code Section 15660. Written notice must be given to all beneficiaries by mail. A bond may be required of a trustee who is a nonresident or is not named in the will. The order appointing the trustee in paragraphs (b) and (c) must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust res set forth in the trust instrument. If no trustee claims the trust res or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed in the same manner as provided by Probate Code Section 17200 to determine to whom distribution must be made.

11.1507 FEES OF TRUSTEES AND THEIR ATTORNEYS

See Sec. 11.1001 et seq. of these rules.

PART SIXTEEN
GUARDIANSHIPS

11.1601 PETITION FOR APPOINTMENT OF GUARDIAN

(a) A petition for appointment of a general guardian of the person or estate of a minor or minors must be filed on Judicial council form GC-210, and the information on the form must be complete. Probate Code § 1510. If the petitioner also wishes to be appointed a temporary guardian, a petition for appointment of temporary guardian must also be filed on Judicial Council form GC-110..

(b) A petition for temporary guardianship will be heard ex parte only if the petitioner satisfies the requirements of California Rule of Court 7.1012 and Local Rule 11.113, and the following documents have been filed (an original and one copy) with the above petitions: (1) proof of service in compliance with Probate Code § 2250(e)(1), or a Declaration of Due Diligence explaining why an exception to the notice requirement "is necessary to protect the proposed ward or his or her estate from immediate and substantial harm" (California Rule of Court 7.1012(b) and (e)); (2) a completed Order Dispensing with Notice (GC-021) for the Judge's signature; (3) a completed Duties of Guardian (GC-248); (4) a completed Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (GC-120); (5) a completed Confidential Guardian Screening Form (GC-212); (6) a completed Consent of a Proposed Guardian etc. (GC-211); (7) a completed Indian Child Inquiry Attachment (ICWA-101(A)); (8) a completed Child Information Attachment (GC-210(CA)); (9) a completed Order Appointing Temporary Guardian or Conservator (GC-140) for the Judge's signature; and (10) a completed Letters of Temporary Guardianship (GC-150). (See GC-505 - "Forms You Need to Ask the Court to Appoint a Guardian of the Person"; GC-510 - "What is 'Proof of Service' in a Guardianship"; ask a Clerk in Room 385 for this Court's Pro Per Guardianship Packet). The petitioner must give notice at least five days before the hearing in compliance with Probate Code § 2250(e)(1).

(c) The Court cannot waive the notice requirements of Probate Code § 2250(e) unless the petitioner can demonstrate that the waiver is "necessary to protect the proposed ward or his or her estate from immediate and substantial harm." California Rule of Court 7.1012.

(d) The petition must set forth with specificity the reason for the necessity of the establishment of a guardianship.

(e) The petition must state whether or not (1) the minor is a ward or dependent of the juvenile court; (2) adoption proceedings are ongoing; (3) custody of the child has been awarded in a family court proceeding; or (4) there is an open family law proceeding involving the child's parents. See Probate code §§ 1511 and 1512.

(f) When a petitioner is a relative, a copy of the petition and other papers filed therewith must be provided to the Court Investigator. See Rule 11. 1809. A copy of the petition only, must be provided to the San Luis Obispo Department of Social Services Child Protective Services. When the petitioner is a non-relative, a copy of the petition and other papers filed therewith must be provided to the San Luis Obispo County Department of Social Services but not to the Court Investigator.

(Amended 1/1/09)

11.1602 INVESTIGATION AND REPORT BY COURT INVESTIGATOR

(a) When a relative of a minor files a Petition for Guardianship of the Persons or Estate, a Court Investigator must do an investigation that covers all of the information in Probate Code Section 1513(a). If any party contends that any parent is "unfit," as defined in Welfare and Institutions Code Section 300, and one or both of the parents contest the guardianship, Child Welfare Services will also be required to provide a Report under Probate Code Section 1513(c).

(Amended 1/1/09)

(b) When a non-relative of a minor files a Petition for Guardianship, a Court Investigator will not complete a Report. Instead, Child Welfare Services will be required to provide a Report under Probate code § 1543(a).

(Amended 1/1/09) [Former Local Rule 11.602(b) repealed 7/1/03] (Amended 1/1/09)

11.1603 GUIDE FOR GUARDIANS

The Judicial Council has approved a "Probate Guardianship Pamphlet" which provides basic information and may be obtained from the Clerk's Office.

11.1604 SUPPORT OBLIGATION OF PARENTS

As parents are required by statute to support their children, the Court will not permit guardianship funds to be used for the minor's maintenance where one or both parents are living except upon a showing of the parent's financial inability or other circumstances which would justify the Court in departing from this rule in the best interests of the minor. In all cases where guardianship funds are to be used for the ordinary expenses of supporting a minor, and where there is a parent living who has the obligation to support the minor, the guardian must obtain Court approval prior to the expenditure of funds. A petition for authority to expend funds for support must be accompanied by a detailed explanation (including financial statements, if necessary) of the parent's inability to support the child.

PART SEVENTEEN
CONSERVATORSHIP

11.1701 PETITION FOR APPOINTMENT OF CONSERVATOR

(a) A petition for appointment of a conservator of the person or estate must be filed on Judicial Council form GC-310, and the form must be complete. If the petitioner also wishes to be appointed a temporary conservator, a petition for appointment of temporary conservator must also be filed on Judicial Council form GC-111.

(b) A petition for temporary conservatorship will be heard ex parte only if petitioner satisfies the requirements of Local Rule 11.113, and the following documents have been filed (an original and a copy) with the above petitions: (1) proof of service in compliance with Probate Code Section 2250(e)(2), or a showing that an exception is necessary "to protect the proposed conservatee or his or her estate from immediate or substantial harm" California Rule of Court 7.1062); (2) a Declaration Supporting a Good Cause Exception to Notice, in the form prescribed by California Rule of Court 7.1062(e); (3) Confidential Conservator Screening form (GC-312); (4) Confidential Supplemental Information form (GC-312); (5) a completed Order Appointing Court Investigator (GC-330) for the Judge's signature; (6) an Ex Parte Application for Order Authorizing Completion of Capacity Declaration (GC-334); (7) a Citation for Conservatorship (GC-320); (8) a Citation (GC-320); (9) a Notice of Conservatee's Rights (GC-341), with the required attachment (GC-341(MA)); (10) a Duties of Conservator form (GC-348) signed by the proposed conservator; (11) a completed Order Appointing a Temporary Guardian or Conservator (GC-140) for the Judges' signature; and (12) a completed Letters of Temporary Conservatorship (GC-150).

(c) The petition shall state facts that establish: (1) good cause for the appointment of a conservator (Probate code Section 2250.2(b); and (2) why granting a conservatorship is the least restrictive alternative for the protection of the conservatee (Probate

code Section 1800.3(b);

(d) The proposed temporary conservatee shall attend the hearing, unless the petitioner can present doctor's declaration that the proposed temporary conservatee "is unable to attend the hearing by reason of medical inability" (Probate Code Section 2250.4(b)); or the Court Investigator has visited the proposed conservatee, and has reported to the court that the proposed conservatee is not willing to attend the hearing, and does not wish to contest the establishment of the temporary conservatorship, and does not object to the proposed temporary conservator.

(e) A separate copy of the petition and other papers filed must be provided to the Court Investigator's office at 1120 Mill Street, Suite A, as soon as possible. The Investigator is now required to do a Report pursuant to Probate Code § 2250.6 prior to the hearing on the petition for temporary guardianship, unless "it is not feasible to do so." In the latter case, the Report must be completed no later than three court days after the hearing. Counsel are required to understand the demands on Court personnel when counsel decides to file and schedule petitions for temporary conservatorship. Court personnel are being required to complete their obligations under the amendments to the Probate Code that took effect in 2007 and 2008 under an unfunded mandate.

(f) Counsel or the proposed conservator should promptly file the required Capacity Declaration (GC-335) with the Dementia Attachment (GC-335) if "dementia powers" are requested under Probate Code Section 2356.5. An individual should not be deprived of any freedom or property for any significant period of time without a medical showing to the Court that he or she is unable to "provide for his or her needs for physical health, food, clothing and shelter" and/or is unable to "manage his or her own financial resources, or to resist fraud or undue influence." Probate Code § 1821(a)(1) and (5).

11.1702 LETTERS OF CONSERVATORSHIP

(a) No Letters of Conservatorship (temporary or permanent) will be issued by the Clerk until the following have been filed: (1) a completed Duties of Conservator and Acknowledgment of Receipt of Handbook form (GC-348); (2) an adequate bond under Probate Code § 2320 and California Rule of Court 7.207 (if a conservatorship of the estate is involved); and/or an order to Deposit Money into Blocked Account (MC-355) and a Receipt and Acknowledgement of Order for the Deposit of Money into Blocked Account (MC-356), signed by the appropriate officer of the financial institution. Blocked accounts can be used to reduce the mandated bond only if the accounts are fully federally insured, and are in the form of "money" (CDs, etc.). Securities accounts should be blocked, if necessary, to prevent the unauthorized use of its assets, but blocked securities accounts cannot supplant bond, since the account value could decline to zero. See Probate Code §§ 1834-1835.

(b) If the Letters of Conservatorship are not issued and filed within forty-five (45) days after filing the Order Appointing Conservator, the conservator's powers will automatically be suspended and no letters must be issued by the Clerk until a further order is executed by the Court.

11.1703 HANDBOOK FOR CONSERVATORS

The Handbook for Conservators can only be purchased at the Clerk's office. This handbook includes the required Directory of Community Resources prepared by the Court Investigator's office.

11.1704 MINIMUM STANDARDS FOR A CONSERVATORSHIP

(a) No conservatorship of the person or of the estate shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. Probate Code § 1800.3(b)

(b) A conservator of the person must avoid any "actual and apparent conflicts of interest with the conservatee," set out in California Rule of Court 7.1059(a)(1)-(4)

(c) No conservatorship of the estate will be granted unless the petitioner also meets the minimum standards set out in Section 1801(b). All conservators of estates must comply with the "standards of conduct for the conservator of the estate" set out in California Rule of Court 7.1059, and must file accounts in accord with Probate Code §§ 2620 and 1060 et. seq., and California Rule of Court 7.575 (unless the conservator can demonstrate that he or she is exempt from accounting under Probate Code §§ 2628(a)).

(d) No order will be granted under Probate Code § 1880 until the petitioner has filed a complete and satisfactory Capacity Declaration (GC-335) with the Dementia Attachment (GC-335A), if dementia powers are requested. Probate Code §§ 1890, 2356 and 2356.5.

(Amended 1/1/09)

11.1705 SUBSTITUTED JUDGMENTS IN CONSERVATORSHIPS

(a) A trust created by order of the probate court for the benefit of a minor or incompetent adult pursuant to Probate Code §2580 et seq., 3100 et seq. or 3600 et seq. will ordinarily be required to remain under the continuing jurisdiction of the court and contain the following provisions to be effective during the lifetime of the incompetent adult or during the minor's minority.

(1) Trustee shall post bond for assets and income of the trust.

(2) Trustee shall file accounting consistent with the requirements of Probate Code §2620 and Probate Code §1060 et seq.

(3) Prior court approval shall be required for investments other than those listed in Probate Code §2574(a).

(4) Trustee shall obtain prior court approval for gifting, hypothecation, borrowing, loans, and sales of assets as would be required by a guardian or conservator of the estate.

(5) Prior court approval shall be required for payments of fees to attorneys, conservators, guardians and trustees.

(6) The trust shall pay for court approved court investigation costs, fees for guardians, conservators, their attorneys and court appointed counsel as well as other costs of administration approved by the court.

(7) There shall be no "no contest" clause in the trust instrument.

(b) The probate court will ordinarily appoint an attorney as guardian ad litem to represent the interests of the minor or incompetent adult in the proceeding to establish the trust.

(c) Where an inter-vivos trust has been established for the benefit of the proposed Conservatee or Ward before the filing of a petition to appoint a Conservator or Ward and where the Trustee and the Conservator or Guardian, as the case may be, are the same individual, the approval of a petition for Conservatorship or Guardianship may be conditioned upon satisfaction of the requirements set forth in this Local Rule.

(Eff. 1/1/05)

PART EIGHTEEN
PROVISIONS COMMON TO GUARDIANSHIPS AND CONSERVATORSHIPS

11.1800 HEARING DATES

(a) Unless otherwise ordered by the Court, petitions for guardianships or conservatorships must be set for hearing by the Clerk six (6) weeks from the filing of the petition.

(b) If a temporary guardianship is granted ex parte, the hearing on general guardianship must be calendared for hearing within thirty (30) days from the date of granting the temporary guardianship. Probate Code Section 2250(d).

(c) If a temporary conservatorship is granted ex parte, the hearing on general conservatorship must be set for hearing by the Clerk six (6) weeks from the filing of the petition.

11.1801 PRIVATE PROFESSIONAL CONSERVATOR/GUARDIAN/TRUSTEE

(a) The court may not appoint a private professional conservator, guardian or trustee unless that person has fully complied with all of the requirements of Probate Code Section 2340 (as effective July 1, 2008) and California Rules of Court 7.1010 and 7.1060, and the professional has filed the required Declaration of Private Professional Guardian - Guardians (GC-005) and Declaration of Private Professional Conservator or Guardian - Continuing Education (GC-006).

(Amended 1/1/09)

11.1802 APPOINTMENT OF TEMPORARY GUARDIAN OR CONSERVATOR

(Repealed 1/1/09)

11.1803 NOTICE

(a) Notice of all hearings must be provided on Judicial Council form GC-020, along with the required Proof of Personal Service (GC-020(P)) for all persons who must be personally served in guardianships under Probate Code Sections 1511(a) and (b). That section provides: "The court may not shorten the time for giving the notice of hearing under this section." The following Judicial council publication is helpful: "What is "Proof of Service" in a Guardianship? (GC-510). Notice (GC-020) may be

served by mail on those persons described in Probate Code Section 1511(d).

(b) The proposed conservatee must be personally served with a Citation (GC-320) and a copy of the petition. Probate Code Section 1824. The Notice of Hearing must be mailed to those persons described in Probate Code Section 1822. That section provides: "The court may not shorten the time for giving the notice of hearing under this section."

(c) A party seeking temporary Letters of Guardianship or Conservatorship must give notice of the application to the spouse, parents, proposed ward or conservatee, other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice, unless on good cause shown the Court orders otherwise. The Court will appoint a temporary conservator/guardian if it is shown that an emergency situation exists that requires immediate attention. A temporary conservator/guardian will be appointed without notice only in the most urgent situations.

(Amended 1/1/09)

11.1804 BOND/BLOCKED ACCOUNT

(a) Except as provided by statute, every guardian and conservator must give a bond in the amount fixed by the Court. Probate Code Section 2320 and comply with requirements set forth in California Rules of Court, Title Seven, Chapter 5. Bond must be filed before issuance of letters.

(Amended 7/1/03)

(1) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the Court in its discretion may dispense with this requirement or may permit the filing of a bond in an amount less than would otherwise be required under Probate Code Section 2320.

(b) The guardian or conservator may elect to place all or a portion of estate assets into a blocked account which would require prior Court approval to access such funds in lieu of, or, to reduce the bond amount. Probate Code Section 2328. Judicial Council form: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's office or can be found on the California Courts website at www.courtinfo.ca.gov.

(Amended 7/1/02)

(c) One appointed as guardian of the person or conservator of the person need not file a bond unless required by the Court.

11.1805 INVENTORY AND APPRAISAL

(a) An inventory and appraisal of the estate, as of the day of appointment, must be filed by the guardian or conservator, with the Clerk within ninety (90) days of appointment, in all cases where there is a conservator or guardian of the estate, even in a case where relief from the requirement of filing accountings may be sought under Probate Code Section 2628. When there are no assets known to or in the possession of the conservator or guardian, the inventory should so indicate. Probate Code Section 2610. The inventory and appraisal must be in the form of accounts for decedents' estates as set forth in these rules. See Rule 11.603(b) After-acquired or newly discovered property must be inventoried and appraised pursuant to Probate Code Section 2613.

11.1806 ACCOUNTS

(a) An accounting must be filed by the guardian or conservator:

(1) At the expiration of one year from the time of appointment and thereafter not less frequently than bi-annually unless otherwise ordered by the Court.

(2) Upon the ward's 18th birthday.

(3) Upon death of the ward or conservatee.

(4) Upon death, removal, or resignation of the guardian or conservator.

(5) Upon any other termination of the guardianship or conservatorship.

(6) At such other times as the Court may order.

(b) Accounts must contain the information and be in the form required in Probate Code §§ 2620 and 1060-1064 and California

Rule of Court 7.575 and must be in the form of accounts for decedents' estates as set forth in these rules. If the account shows expenditures not authorized by prior order of the Court, the guardian or conservator must provide supporting declarations or testimony with respect to such expenditures before the account must be approved. An explanation of any unusual items appearing in the account should be set forth in a statement included in the petition and account.

(Amended 1/1/09)

(c) The guardian or conservator must set forth in a separate schedule all debts of the ward or conservatee known or anticipated by the guardian or conservator.

(d) The conservatee's current residence address must be set forth in each report or account.

(e) The petition and account must set forth a statement of the age, health/physical condition, activity/treatment program and whereabouts of the ward or conservatee.

(f) Where there are multiple wards or conservatees joined in a single proceeding an account must reflect a separate accounting for each of the respective wards or conservatee.

(g) All copies of the account (original, copy for Probate Examiner, and copies to be endorsed and returned to attorney) must be forwarded to the Probate Examiner. After completing his review, the Probate Examiner must file the account and set the hearing on a date mutually agreed upon with counsel. Counsel may set the account for hearing if the Probate Examiner fails to complete his review and set the same for hearing within thirty (30) days of receipt from petitioner or his counsel.

(h) All Conservatorship and Guardianship accounts must be supported by original financial institution statements as required by Probate Code §2460(c). Balances shown in the accounting, if different from the balances shown in the financial institution statement, must be reconciled in the account.

(Amended 1/1/05)

11.1807 REPORT BY COURT INVESTIGATOR OR PROBATE EXAMINER

(a) The Court Investigator or Probate Examiner must review each account filed to ascertain the correctness of the account and whether the assets are being utilized in the best interests of the conservatee or ward. The Court Investigator or Probate Examiner must file a report of his or her findings with the Court.

(b) The Court Investigator's assessment shall be charged by the Court Probate Examiner for all account reviews that do not require a home visit by the Court Investigator. In the event that a home visit is conducted, the assessment shall be charged by the Court Investigator only.

(Amended 1/1/05)

11.1808 WAIVER OF ACCOUNTING—WHEN PERMITTED

(a) The Court does not favor the waiver of any final accounting by a guardian or conservator. A minor may not waive an accounting. A minor who has attained majority will not be permitted to waive a final accounting except upon a showing of unusual circumstances, and then only if the minor is present in Court at the hearing on the petition for termination without an accounting.

(b) In the event that the court has dispensed with the necessity of an accounting pursuant to Probate Code §2628, the fiduciary must file a final report that contains allegations concerning whether the estate continued to satisfy all of the conditions required by Probate Code §2628(b) in lieu of filing a final account. The final report must set forth the assets on hand and the proposed disposition of those assets. Notwithstanding any order dispensing with the necessity of the account, the Court may, under appropriate circumstances, require the filing of an account.

(Amended 1/1/05)

11.1809 PAPERS TO BE DELIVERED TO COURT INVESTIGATOR

In all matters in which the Court Investigator has been appointed, the following documents must be served upon the Court Investigator:

(a) A copy of the petition and order appointing the guardian or conservator.

(b) A notice of every hearing involving the guardianship or conservatorship must be served at least 10 days prior to the hearing.

(c) A copy of any report and account filed with the Court and a copy of the order approving or disapproving the account.

(d) A copy of the order discharging the conservator of a deceased conservatee or the guardian of a deceased ward or ward reaching majority.

(e) The address of the conservatee or ward.

11.1810 ORDER FOR COURT INVESTIGATOR'S FEES

If Court Investigator's fees are due, the Court will not sign the order approving accounting or terminating the matter until the fee is paid or waived. Probate Code Section 1851.5.

11.1811 POWERS AND INVESTMENTS BY GUARDIAN OR CONSERVATOR

(a) It is the policy of the Court to grant only those additional powers necessary or proper under the circumstances in each case. The Court will not routinely grant the guardian or conservator the additional powers set forth in Probate Code Section 2591 except on showing of good cause. Any powers so granted must be set forth at length in the order and in the letters.

(b) The investment standard set out in Probate Code Sections 16040(a) and 16045 et seq. relating to investments by trustees, is the standard in authorizing proposed investments by guardians or conservator.

(c) Subject to the limitations set forth in Probate Code Section 2574(b), the guardian or conservator may invest funds in those investments described in Probate Code Section 2574(a) without authorization of the Court. Investments in existence at the time of the creation of the guardianship usually may be maintained.

(d) The Court will not approve the investments of funds in unsecured loans, loans to a near relative, or bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

11.1812 FINAL DISCHARGE

Each order for final discharge submitted to the Court for approval must be accompanied by an affidavit of the guardian or conservator stating that distribution has been made of all property and assets of the estate in accordance with the order for distribution, that all money, stocks, bonds, and other personal property have been delivered to the distributees as ordered by the Court, that receipts of the distributees are on file, and that all acts lawfully required of him, in his representative capacity, have been performed.

11.1813 TERMINATION OF GUARDIANSHIP OR CONSERVATORSHIP

Upon the filing of a petition to terminate any guardianship or conservatorship, the Court Investigator must make a report to the Court concerning the circumstances of the termination and his recommendations, if any.

11.1814 SPECIAL NEEDS TRUSTS

(a) The purpose of a special needs trust is to set aside a fund to meet the statutorily defined "special needs" of a "disabled person," while still maintaining that person's rights to receive needs based public benefits, such as Medi-Cal. 42 U.S.C. § 1382c(3)(A) and §1396p(d)(4)(A).

(b) In order to achieve this purpose, the "disabled person" must meet the requirements of Probate Code Section 3603, and the Trust itself must comply with the requirements of Probate code § 3604 and California Rule of Court 7.903. In particular, the form of the special needs trust that is proffered to the court for approval must contain all of the provisions set out in California Rule of Court 7.903(c). Special needs trusts are required to file accountings in the form and frequency required by Probate Code §§ 3620 and 1060-1064. If these rules are not explicitly followed, the California Department of Health or the Department of Social Security may terminate the trust, and the beneficiary may lose his or her public benefits.

(Amended 1/1/09)

PART NINETEEN
PROPERTY BELONGING TO MINORS

11.1901 DISPOSITION OF MINOR'S FUNDS

(a) A petition under Probate Code §§ 3410-3413 must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement of the reasons that the requested relief will best serve the interests of the minor.

(b) The petition may be presented ex parte if the only relief sought (other than reimbursement of costs and award of attorneys' fees) is to deposit funds in a blocked account and the amount involved does not exceed $20,000. Otherwise, the petition must be noticed.

(c) Where the minor's funds are to be deposited into a blocked account, the order must provide that the person holding funds must distribute the ordered amount of fees and costs, if any, directly to the person(s) entitled thereto and disburse the balance to the selected depository, whose name and address must be specified. A hearing will be calendared in court to ensure compliance with the Court order and a personal appearance is mandatory if a receipt of deposit has not been filed Judicial Council Forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at www.courtinfo.ca.gov.

(Amended 7/1/02)

11.1902 REQUEST FOR WITHDRAWAL OF FUNDS IN BLOCKED ACCOUNT

(a) All requests or petitions for withdrawal of minor's funds deposited in a blocked account must be made to the Court and may be presented ex parte in completed form. A statement must be presented with the petition verifying the amount of each item of the proposed expenditure. Local court form "Petition for Withdrawal of Minor's Funds" is available at the Clerk's office.

(b) If the funds requested are for the support and maintenance of the minor and the petitioner is a parent, the parent must file a declaration showing the parent's financial inability or other circumstances justifying the withdrawal. See Rule 11.1604(c). No subsequent order for withdrawal will be signed by the Court until the trustee or guardian has complied with the directions of the Court contained in prior withdrawal orders. This means that all supporting vouchers are and required certifications and declarations must be on file with the Clerk.

(d) Judicial Council Form MC-357, Order For Withdrawal Of Funds From Blocked Account is available at the Clerk's Office or can be found on the California Courts website and must be presented in accordance with Local Court Rule 11.501.

(Amended 7/1/02)

11.1903 WITHDRAWAL ON MINOR REACHING 18 YEARS OF AGE

When a petition for withdrawal of all the funds is based upon the minor's having reached majority, a birth certificate or other satisfactory evidence of age must be presented with the petition.

PART TWENTY
MINOR'S CLAIM

11.2001 SETTLEMENT OF MINOR'S CLAIM

Requests for approval of minor's compromise must be heard on the Probate Calendar.

(Amended 1/1/05)

11.2002 ATTORNEY FEES IN MINOR'S COMPROMISE CASES

(a) Costs. Allowable costs (CCP 1033.5) paid or incurred by the attorney will ordinarily be deducted from the judgment/settlement prior to computation of fees.

(Amended 4/1/95)

(b) Structured Settlement. If the petition for approval of a claim under § 3500(b) of the Probate Code relates to a structured settlement calling for future periodic payments, the petition shall state the cost of the annuity.

(Amended 1/1/05)

11.2003 DISTRIBUTION

(a) If the petition is approved, the Court must direct whether the funds are to be paid to a parent, to a blocked account, or to a general guardian.

(b) If the settlement order provides for a deposit in a blocked account in lieu of appointment of a guardian, the Court must continue the matter on calendar for filed verification of compliance. A personal appearance is mandatory if proof of deposit is not on file Judicial Council forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at www.courtinfo.ca.gov.

(Amended 7/1/02)

APPENDIX A
NEWSPAPERS OF GENERAL CIRCULATION
Area of Circulation Published

The Tribune P.O. Box 112 San Luis Obispo, CA 93406	DAILY San Luis Obispo County
The Country News Press P.O. Box 427 Paso Robles, CA 93447	TWICE WEEKLY Paso Robles, Templeton, Atascadero & surrounding areas
Atascadero News P.O. Box 6068 Atascadero, CA 93423	TWICE WEEKLY Atascadero, Templeton, Santa Margarita
Five Cities Times Press-Recorder P.O. Box 460 Arroyo Grande, CA 93421	TWICE WEEKLY Arroyo Grande, Nipomo, Shell Beach, Pismo Beach, Grover Beach
The Sun Bulletin P.O. Box 1387 Morro Bay, CA 93443	WEEKLY Morro Bay, Cayucos, Los Osos, Cambria
The Cambrian P.O. Box 67 Cambria, CA 93428	WEEKLY Cambria & San Simeon
New Times 197 Santa Rosa San Luis Obispo, CA 93405	WEEKLY San Luis Obispo County

APPENDIX B
SUMMARY OF ACCOUNT

LOCAL RULE 11.901(b)

The summary shall be in a format substantially the same as the following, except that inapplicable categories need not be shown:

SUMMARY OF ACCOUNT
With Principal and Income Breakdown

Petition is chargeable, and is entitled to the credits, respectively, as set forth in this Summary of Account. The attached supporting schedules are incorporated herein by reference.

PRINCIPAL CHARGES

Property on Hand at Beginning of Account (or Inventories)	$_____
Additional Property Received (or Supplemental Inventories)	$_____
Gains on Sales (Schedule A)	$_____
TOTAL CHARGES—PRINCIPAL:	$_____

PRINCIPAL CREDITS

Funeral Expenses (Schedule B)	$_____
Debts of Decedent (Schedule C)	$_____
Administration Expenses (Schedule D)	$_____

Losses on Sales (Schedule E)	$_____
Distribution of Assets per Court Order (Schedule F)	$_____
Estate and Inheritance Taxes (Schedule G)	$_____
Principal Assets on Hand (Schedule H)	$_____
TOTAL CREDITS—PRINCIPAL:	$_____

INCOME CHARGES

Interest Received (Schedule I)	$_____
Dividends Received (Schedule J)	$_____
Rents Received (Schedule K)	$_____
Royalties Received (Schedule L)	$_____
TOTAL CHARGES—INCOME	$_____

INCOME CREDITS

Accounting Fees Paid in Connection with Income (Schedule M)	$_____
Real Estate Taxes Paid (Schedule N)	$_____
Ordinary Repairs Paid (Schedule O)	$_____
Insurance Premiums Paid on Income Property (Schedule P)	$_____
Utilities Paid (Schedule Q)	$_____
Income Distributed (Schedule R)	$_____
Income on Hand (Schedule S)	$_____
TOTAL CREDITS—INCOME:	$_____

APPENDIX C
EXAMPLE OF STATUTORY FEE COMPUTATION
(Rule 11.1003)

(Repealed 1/1/05)

APPENDIX D
LOCAL RULE 11.100

CHECKLIST: "ORDINARY" SERVICES
CEB—California Decedent Estate Practice §20.14

- Meeting with the client to review the will and discuss the petition for probate, assets and liabilities, beneficiaries, notices, etc.
- Preparing Petition for Letters of Special Administration, if ex parte (if contested, extraordinary fees to the attorney for the appointed special administrator may be petitioned for if shown to be beneficial to the estate).
- Preparing petition for probate and related papers to appoint the representative, including locating the will and beneficiaries.
- Ordering publication and mailing of Notice of Petition to Administer Estate.
- Preparing and service Notice to Petition to Administer Estate if in a county where mailing of notice not handled by legal newspaper or if additional beneficiaries discovered and a supplement must be filed.
- Preparing required supplements or declarations.
- Preparing separate petition for authority under the Independent Administration of Estates Act.
- Preparing Petition for Appointment of Successor Representative and Order for Limited Republication.
- Preparing Inventory and Appraisal.
- Preparing Petition for Family Allowance (although it is not the representative's duty to file such a petition, and attorneys' fees may be billed directly to the nonrepresentative petitioner).
- Handling debts and creditors' claims, including acceptance, rejection, and payment (unless disputes arise that require compromise or litigation).
- Preparing status report under Probate Code Sections §§12200-12205, unless multiple reports are necessary.

- Preparing petition on interim accounts and reports.
- Preparing petition for fees.
- Preparing final account and report and petition for compensation, fees, extraordinary compensation, and final distribution.
- Preparing required notices.
- Preparing required attorney orders.
- Supervising distribution, preparation of receipts of distributees, and discharge of representative.
- Determining expenses, including local telephone calls, normal postage, and secretarial services.

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San Mateo County
Probate Rules

Effective July 1, 2009

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PROBATE DEPARTMENT

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DIVISION IV
PROBATE DEPARTMENT

CHAPTER 1
ORGANIZATION AND ADMINISTRATION

4.1 GENERAL PROVISIONS

A. Tentative Rulings: Tentative rulings on probate matters may be obtained by phoning (650) 599-3481 after 3:30 p.m. one court day prior to the hearing.

Matters set on the non-appearance calendar are *not automatically pre-approved*. If an appearance will be necessary for a matter that had been set on the non-appearance calendar, the tentative ruling tape will instruct the attorney to appear. If the attorney will not be able to appear on the previously scheduled non-appearance hearing date, the attorney may contact the research attorney and the matter will be continued to the first available date when the attorney can appear.

B. Continuances in Conservatorship and Guardianship Matters: The attorney of record, or petitioner in pro per, will be allowed to continue conservatorship and guardianship matters *twice;* however, only one continuance will be allowed for General Plan and/or Inventory and Appraisement hearing. If a further continuance is requested, an appearance will be required by the attorney or the self-represented conservator or guardian, before the Court will consider granting another continuance.

C. Continuances in Probate Matters Other Than Conservatorship and Guardianships. The attorney of record, or petitioner in pro per, will be allowed to continue all other probate matters *twice*. If the matter is not ready for hearing after two continuances it will be dropped from the probate calendar, and the matter will have to be reset and re-noticed before it will be heard.

D. Appropriate Dispute Resolution, ADR, Policy Statement. Contested probate matters, including will and trust contests, are uniquely well suited for various types of ADR processes including, but not limited to, mediation, neutral evaluation and arbitration. The Court finds that ADR can contribute to the prompt, economical and satisfying resolution of probate disputes. Accordingly, unless otherwise ordered, any contested probate matter set for an evidentiary hearing or trial shall be referred to ADR as soon as the Probate Department is aware the contested matter will not be resolved by declaration on the regular Probate Department Calendar. The Court may refer parties to ADR at the initial hearing in the case or at any other point in the proceedings deemed appropriate. Cases also may be referred directly to ADR by agreement of the parties.

(1) ADR Referral Procedures. Upon referral to ADR, the judge will order parties and their counsel to meet with or contact court ADR staff to discuss their ADR options and the court's ADR program.

The Court expects parties to complete ADR within 60-90 days after the initial referral to ADR, unless otherwise ordered or good cause is shown to dispense with this requirement.

(2) Stipulation and Order to ADR. Parties shall, within 21 days of the date of the referral to ADR, file a completed Stipulation and [Proposed] Order to ADR with the court. The Stipulation shall include the name of the neutral, the date of the ADR session and the names of those who will attend. A copy of the Court's standard probate Stipulation form is available at the probate counter in the Clerk's Office, on the court's website or by contacting the ADR Department.

E. Sanctions: **Failure to comply with local rules may result in sanctions under the Superior Court of California, County of San Mateo Local Court Rule 0.2.**

(Adopted, effective July 1, 1996; Amended, effective January 1, 2003; effective July 1, 2004)

4.2 HEARING

A. Hearing Schedule. As of January 1, 2004, Probate matters will be heard on Monday, Tuesday, Wednesday and Friday in the designated Probate Department at 9:00 a.m. Please check with the Court Clerk's Office, Probate Division or the Court's website at www.sanmateocourt.org for future schedule changes. There is no regular probate calendar on Thursdays. LPS conservatorship matters are heard by the court on Wednesday in the designated Probate department at 11:00 a.m.

B. Probate Calendar. The regular probate calendar sets only a limited number cases on cases each day (approximate 15 to 20). Counsel may request/set the date of the hearing on the moving papers. If the requested date is unavailable, the clerk shall calendar

the hearing date to the next earliest available hearing date. The clerk's office shall notify the attorney of record of any such resetting.

C. Advancing Hearing Dates/ Orders Shortening Time. If a probate matter cannot be heard on the date requested due solely to the fact that the court's calendar is full, counsel/self-represented parties may make ex parte application to the court to advance the hearing upon a demonstration of good cause. Probate matters may be heard on less than the statutory required notice only upon the issue of an Order Shortening Time (OST) by the court. OST's may be obtained ex parte upon notice and a demonstration of good cause.

D. Telephonic Appearances

(1) Telephonic appearances on the probate calendar are governed by California Rules of Court, Rule 3.670.

(2) Judicial Approval. Telephonic appearances through the use of an independent vendor, currently CourtCall, are permitted at certain probate hearings. Telephonic appearances are not permitted for initial conservatorship and guardianship appointments (Probate Code, §1514, §1825), petitions for Temporary Restraining Orders (e.g., elder abuse cases) or any other matters within the court's discretion. See Rule 4.6

(3) Procedure. A party wishing to make a telephone appearance that has been permitted by the court must serve and file a Request for Telephone Appearance Form with CourtCall not later than 4:30 p.m. on the first court day prior to the appearance. Copies of the Request For CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.

On the day of the hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(4) Referral to ADR. At the hearing, parties may be referred to an appropriate dispute resolution ("ADR") process (e.g., mediation, arbitration or neutral evaluation). If parties are referred to ADR, they must redial the dedicated toll-free teleconference number immediately following their appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with court ADR staff. If a case has been referred to ADR, a party's court appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. See also ADR Rule 4.01

(Adopted, effective July 1, 1996; Amended, effective January 1, 2003; Amended, effective July 1, 2004, Amended, effective July 1, 2006) (Amended, effective January 1, 2007)

4.3 CONTESTED MATTERS

(Adopted, effective July 1, 1996; **REPEALED,** effective July 1, 2004)

4.4 Length of Hearing

The estimated length of the hearing shall determine on which calendar the matter is to be set.

A. All matters estimated by counsel/ self-represented party to last no longer than fifteen (15) minutes in duration shall be set on the daily probate calendar.

B. All matters estimated by counsel to require a hearing of longer than fifteen (15) minutes shall be set on the long cause calendar. Long cause matters will be specially set in the designated probate department depending upon the court's calendar and availability. Counsel/self-represented parties shall notify the clerk of the court in the Probate department to receive a special set hearing date and time. If the court's calendar and availability do not permit the hearing of the long cause matter, counsel/self-represented parties will be directed to notify the Master Calendar Coordinator (650) 363-4599 to obtain a date on the master calendar.

(1) When a matter is put on the long cause calendar, all papers in support or opposition of the matter must be filed and served five (5) court days in advance of the hearing date in the office of the Clerk of the Court, Probate Division.

(2) All long cause matters shall comply with the Law and Motion rules.

(Adopted, effective July 1, 1996; Amended, effective January 1, 2000, effective July 1, 2004) (Amended, effective July 1, 2009)

4.5 NON-APPEARANCE

Those matters which may be determined upon a verified petition and without testimony shall be submitted for appropriate action by the Court without appearance by counsel/self-represented parties or witnesses provided that all required documents are submitted timely, as follows:

A. All declarations, affidavits, consents, waivers, proofs of service, proofs of publications, proposed orders and other necessary papers shall be delivered to the Superior Court Clerk's Office, Probate Division, no later than five (5) court days prior to the hearing. Supporting papers filed after the moving papers must show the scheduled hearing date on the face sheet.

B. The verified petition or an accompanying affidavit signed by the petitioner or by the personal representative or by counsel of record for either of said persons shall set forth the information necessary to establish the amount of bond, if one is required.

C. Failure to submit all necessary papers 5 court days prior to the hearing will result in a continuance of the matter at the court's discretion and convenience.

D. All matters will be non-appearance except as stated in Rule 4.6 or where required by the court.

(Adopted, effective July 1, 1996; Amended, effective July 1, 2004)

4.6 APPEARANCE

A. Generally. An appearance will be required on the hearing of all matters that are not pre-granted or continued on the Court's Tentative Rulings that are reported on the tape-recorded telephone message or on the Court's website at www.sanmateocourt.org.

B. Telephone Appearance. Except in petitions to appoint a conservator or guardian, or confirm a sale of property, telephone appearances may be allowed in matters where counsel has made arrangements through CourtCall. Reference is made to Local Rule 4.2.

C. Filing of Appearance Initiating Documents. All supporting papers for the party initiating an appearance on the probate calendar shall be filed no later than five (5) court days prior to the hearing. Replies shall be filed no later than two (2) court days prior to the hearing. Filing of papers shall occur in the office of the Clerk of the Court, Probate Division at the location where the matter is to be heard.

D. Proposed Order. Except in the case of confirmations of sales and contested matters, a proposed order must be submitted to the office of the Clerk of the Court, Probate Division, at least five (5) court days in advance of the scheduled hearing date, with the scheduled hearing date noted on the face sheet. Failure to submit a timely proposed order five (5) days in advance of the hearing may result in a continuance of the hearing.

E. Personal appearance by counsel will be required in the following cases:

(1) Contested matters.

(2) Proof of holographic wills, only when specially required by the hearing judge.

(3) Hearings on petitions for court confirmation of sales of property.

(4) Appointment of guardian or conservator.

(5) Any non-routine matter that by law requires the personal appearance of any person.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000; effective July 1, 2004)

4.7 EX PARTE MATTERS

A. Ex parte petitions shall only be brought when specifically authorized by the Probate Code, in exigent circumstances or in emergencies.

B. Notice of the ex parte petition shall be given to all parties entitled by provision of the Probate Code to receive notice of the matter which is the subject of the ex parte petition by the time as required by California Rules of Court, Rule 3.1203-3.1204.

C. All ex parte applications must allege whether special notice has been requested. If special notice has been requested, the application must identify each person who has requested such notice and must allege that special notice has been given to that

person or has been waived by that person. A proof of service of special notice or a written waiver of special notice must be presented with each application. All Probate ex parte applications must comply with California Rules of Court, Rules 3.1203-3.1204.

D. Each petition for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing an order. Probate ex partes shall be heard each afternoon between the hours of 2:00 p.m. and 3:30 p.m. in the department assigned to hear regular probate matters. No prior appointment need be made for any ex parte hearing.

(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000; effective July 1, 2004)(Amended, effective January 1, 2007)

CHAPTER 2
PLEADINGS

4.8 CAPTION

All probate pleadings shall conform to the caption requirements of Code of Civil Procedure §422.30. In addition, all probate pleadings must clearly and completely identify the nature of the relief sought or granted. The caption of the pleading shall include the date, time and location of any scheduled hearing. All pleadings shall have identified the attorney of record or state that the party is appearing in pro per. A facsimile number, if available, shall be included below the attorney's/self-represented party's telephone number.

Reference: CCP § 422.30, California Rules of Court, Rules 3.1110 and 7.102.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004) (Amended, effective January 1, 2007)

4.9 PETITION

The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute. All petitions for instructions shall include a memorandum of points and authorities filed in support of the petition, with appropriate citations. The petition shall also set forth the specific instructions which the petitioner believes the court should order.

All other petitions seeking relief which is not provided for by statute, shall include a memorandum of points and authorities filed in support of such relief, with appropriate citations. The petition shall also set forth the specific nature of the relief sought.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.10 JUDICIAL COUNCIL FORMS

A. All Judicial Council adopted Probate forms must be used where applicable (Probate Code §1001, California Rules of Court, Rule 7.101). In addition, the Superior Court in San Mateo County requires the use of the following local court forms:

1. Notification to Court of Addresses [Conservatorship] (PR-1)

2. Notification to Court of Addresses [Guardianship] (PR-2)

3. Request for Appointment of Probate Referee [Probate Estates](PR-5)

4. Uncontested Calendar Request [All Probate](PR-CV-FL-7)

5. Declaration for Northern Branch Assignment (PR-CV-FL-14)

6. Guardianship Affidavit, Questionnaire, and Declaration (PR-18)

7. Confidential Status Report (Conservatorship) (PR-19) (or a more detailed pleading that contains, at the minimum, all of the information that is required in PR 19).

B. All pertinent information requested on a form must be completed in its entirety before being submitted to the Probate Clerk's office for filing.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004) (Amended, effective July 1, 2005) (Amended, effective July 1, 2006)

4.11 ACCOUNTS

(Adopted, effective July 1, 1996; **REPEALED,** effective July 1, 2004; refer to Rule 4.49)

4.12 VERIFICATION

Verifications are required when filing the following probate documents:

Petitions, Reports and Accountings, Objections, or responses to Petitions/ Reports/ Accountings.

Reference: Probate Code, §§ 1020-1023; and California Rules of Court, Rules 7.103, 7.104.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

CHAPTER 3
SPOUSAL PROPERTY PETITION

4.13 STATEMENT OF TITLE

(Adopted, effective July 1, 1996; **REPEALED,** effective July 1, 2004)

4.14 ALLEGATIONS IN SUPPORT OF SHOWING OF COMMUNITY PROPERTY

A. If record title to property, either real or personal, is not in community property form, and the petitioner seeks confirmation of the property as community property, the petitioner must allege the facts necessary to give rise to the legal conclusion that the property in question is community property including, but not limited to:

1. Date and place of marriage.

2. The decedent's net worth at time of marriage.

3. Whether or not the decedent received any significant gifts or inheritance after marriage; and,

4. That the property to be set aside is not traceable to such initial net worth or later gift or inheritance.

5. Date of transmutation, if needed.

B. If the decedent and surviving spouse were married outside California or lived outside California during the marriage, the same allegations required above must be made respecting the decedent's net worth at the time of entry or each re-entry into California.

C. For all transmutations of title to real or personal property made after January 1, 1985, there must be an express written declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

D. If the community or quasi-community property claim is based on any document, a copy of the document showing signatures must be attached to the petition. However, if the document is lengthy and only portions of it are relevant to the claim, only the relevant portions need be attached. If it is believed that disclosure of the document would be detrimental, the document or the relevant portions may be paraphrased in the petition accompanied by a statement that a copy of the document itself will be made available to the Court.

Reference: Family Code §§850-853; Probate Code §§100-101 and §§13500-13660; and California Rules of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.14.1 SPOUSAL PROPERTY PETITION FILED WITH PETITION FOR PROBATE

Refer to the California Rules of Court, Rule 7.301 for requirements.

Reference: Family Code §§850-853; Probate Code §§100-101 and §§13500-13660

(Adopted, effective July 1, 2004)

4.15 FEES

Pursuant to Probate Code Section 13600, fees for services connected with filing a spousal property petition are not subject to

court approval, except as provided in that section.

Reference: Family Code §850-§853; Probate Code §100-§101 and §13500-§13660; and California Rules of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.16 ELECTION OF SURVIVING SPOUSE TO ADMINISTER PROPERTY

If the personal representative elects to administer the community, quasi-community, or separate property passing to or belonging to a surviving spouse pursuant to Probate Code, §13502, the election must also be supported by a written statement by the surviving spouse indicating a consideration of the alternative procedures available to the surviving spouse. The written statement must also contain an acknowledgment by the surviving spouse that the inclusion of the property in the administration could result in appraisal fees, commissions and attorney fees, that are higher than if an alternative procedure was used.

Reference: Family Code §§850-853; Probate Code §§100-101 and §§13500-13660; and California Rule of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

CHAPTER 4
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS:
PROOF OF WILLS

4.17 Appointment of Special Administrator

Counsel must personally present the petition to the Court. Such petitions would ordinarily require appearance and notice as required in California Rule of Court, Rules 3.1200-3.1207. Except in the instance of a contest, special letters will issue for only a specified period of time. Although preference is given to the person entitled to letters, if it appears that a bona fide contest exists, the Court will consider the advisability of appointing a neutral person or corporate fiduciary. Reference: Probate Code §§8000-8547 and §§10400-10503; and California Rule of Court, Rules, 3.1200-1207, 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004) (Amended, effective January 1, 2009)

4.18 PETITION FOR PROBATE OF WILL AND LETTERS OF ADMINISTRATION

Copies of all instruments offered for probate must be attached to the petition.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004) (Sections (a), and (c) have been renumbered new Rules 4.18.1, 4.18.2, and 4.18.3)

4.18.1 HOLOGRAPHIC WILLS

When a holographic instrument is offered for probate, by filing it with the Court and attaching it to the Petition for Probate and other supporting papers (e.g., proof of Holographic Instrument), a typewritten copy must be accompany the holographic instrument.

Reference: Probate Code §§8000-8547 and §§10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18(a))

4.18.2 FOREIGN WILLS

Where an instrument written in a foreign language is offered, it must similarly be accompanied by an English translation, the accuracy of which is verified by the translator.

Reference: Probate Code §§8000-8547 and §§10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18 (a))

4.18.3 ATTACHMENT 9 TO PETITION FOR PROBATE

In addition to those required by law, the following persons shall be listed on Attachment 9 to the Petition for Probate:

1. Even though a decedent died testate, the petition, as in the case of intestacy, must contain the names and relationships of all the heirs of the decedent. An heir is any person who would be entitled to distribution of a part of the decedent's estate (including

those who would be heirs by virtue of Section 6402.5 if the decedent had a predeceased spouse) if the decedent had died intestate.

2. All contingent heirs and legatees must be listed including persons provided for in the will but whose bequests have been revoked by a subsequent codicil.

3. If a named legatee predeceased the decedent or did not survive for the designated survival period, that fact must be stated together with the approximate date of death (counsel is advised to review the notice requirements when a beneficiary has died). Reference: California Rules of Court, Rule 7.51.

4. If an heir or legatee died after the decedent, that person shall be listed with the notation that he or she is deceased. If a personal representative has been appointed, the deceased heir or legatee shall be listed in care of the name and address of his or her personal representative. If no personal representative has been appointed, that fact shall be alleged (counsel is advised to review the notice requirements when a beneficiary has died). Reference: California Rules of Court, Rule 7.51.

5. The nominated trustee(s) of a trust created by the will shall be listed.

6. All executors and alternate executors shall be listed.

Reference: Probate Code §§8000-8547 and 10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18 (c)) (Amended, effective January 1, 2007)

4.19 NOTICE REQUIREMENTS

A. Direct notice required. Noticing requirements are detailed and complex. Refer to the California Rules of Court, Rule 7.51(a).

B. Notice to attorney. Refer to California Rule of Court, Rule 7.51(b)

C. Notice to guardian or conservator: When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator and, unless the court has dispensed with such notice, to the ward or the conservatee. Refer to California Rules of Court, Rule 7.51(c).

D. Notice to minor. Refer to California Rule of Court, Rule 7.51(d)

E. Notice required in a decedent's estate when a beneficiary has died. Refer to California Rules of Court, Rule 7.51(e).

F. Additional Notice Requirements: In addition to the above, notice must also be provided to the following:

(1) To any alternative executor and to a non-petitioning co-executor;

(2) To the Attorney General where there is a charitable trust involved as set forth in California Probate Code, section 8111."

G. Petition Removed from Calendar. If the original petition is taken off calendar, a new notice must be published and served.

H. Defective Notice.

(1) Publication correct but mailing defective. The hearing normally will be continued to allow a new mailing at least 15 days before the continued hearing date.

(2) Mailing correct but publication defective. The matter must be taken off calendar and a new notice must be given by publication and mailing.

Reference: Probate Code §§8000-8547 and §§10400-10503; and California Rule of Court 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.19.1 SERVICE OF NOTICE

A. Service. The service must be completed by a person other than petitioner. The server must complete a Proof of Service.

B. Proof of Service. A written Proof of Service (an original and two copies) must be filed with the Court Clerk's Office, Probate division in Room A, prior to the court hearing as prescribed by the California Rules of Court. If service is required on more than one person, a separate Proof of Service may be submitted for each service.

C. Declaration of Diligent Search. Refer to California Rules of Court, Rule 7.52(a).

D. Mailed notice to county seat. Refer to California Rules of Court, Rule 7.52(b).

E. The court may prescribe or dispense with notice. Refer to California Rules of Court, Rule 7.52(c)

F. No Proof of Service. If service is not completed or no written Proof of Service is on file with the Court, the Court may continue the hearing on the Petition.

(Adopted, effective July 1, 2004, formerly Rule 4.19(b))

4.19.2 PUBLICATION

Refer to California Rules of Court, Rule 7.54.

(Adopted, effective July 1, 2004, formerly Rule 4.19(c))

4.20 PROOF OF WILLS

In uncontested matters, both witnessed and holographic wills may be proved by declaration without the need of testimony in open court.

Reference: Probate Code §§8000-8547 and §10400, specifically sections 8220, 8250 to 8254; California Rule of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.21 LOST OR DESTROYED WILLS

Declarations of witnesses will be required to prove a lost or destroyed will under the applicable provisions of Sections 8220-8226. If the will is proved, the provisions shall be attached to the Order for Probate per Probate Code Section 8223.

Reference: Probate Code §8000-§8547 and §10400-§10503; and California Rule of Court Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.22 RENUNCIATIONS AND DECLINATIONS TO ACT

A written renunciation shall be filed by or on behalf of a nominated executor who does not petition as such. Similarly, a written declination shall be filed by or on behalf of an individual who is entitled to priority for issuance of letters of administration but does not desire to act as such. If the necessary renunciation or declaration is not filed, the petition shall indicate the reason.

Reference: Probate Code §8000-§8547 and §10400-§10503; and California Rule of Court Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

CHAPTER 5
BOND

The guidelines in this chapter apply to guardians, conservators and trustees, as well as to personal representatives, except as otherwise indicated in Chapter 12.

4.23 EVIDENCE AS TO AMOUNT OF BOND

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

4.24 WHEN BOND IS NOT REQUIRED

A. Personal Representative as Sole Heir/beneficiary. When the verified petition for probate so requests, unless the will requires bond, no bond will be required of the personal representative where the petitioner is the sole heir or sole beneficiary under the will. However, the Court, in its discretion, may require a bond.

B. All Heirs/Beneficiaries Waive Bond. When the verified petition for probate so requests, unless the will requires bond, no bond will be required when all beneficiaries of the estate waive bond. However, the Court, in its discretion, may require a bond.

Reference: Probate Code §§8480-8488 and §§9700-9705; and California Rule of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.24.1 STATEMENT OF WAIVER IN PETITION

Reference: California Rules of Court, Rules 7.201

(Adopted, effective July 1, 2004)

4.24.2 TWO OR MORE PERSONAL REPRESENTATIVES

Reference: California Rules of Court, Rule 7.202 and Probate Code §8481(a)(2).

(Adopted, effective July 1, 2004)

4.24.3 SEPARATE BONDS FOR INDIVIDUALS

Reference: California Rules of Court, Rule 7.203.

(Adopted, effective July 1, 2004)

4.24.4 INDEPENDENT POWER TO SELL REAL PROPERTY

Reference: California Rules of Court, Rule 7.205.

(Adopted, effective July 1, 2004)

4.25 NON-RESIDENT EXECUTORS OR ADMINISTRATORS

A nonresident nominated to serve as personal representative without bond shall be required to post bond in such amount as the Court determines, absent a waiver of bond by all parties entitled to distribution.

Reference: Probate Code §§8480-8488 and §§9700-9705; and California Rule of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 1996) (Amended, effective July 1,2004)

4.26 REDUCING BOND

Bonds may be reduced at any time after appointment by an ex parte petition and order reducing bond, together with a receipt of a depository showing that assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate after excluding those held by the depository, and it must appear that the reduced bond adequately covers the amount to be protected.

(Adopted, effective July 1, 1996) (Amended, effective July 1,2004)

4.26.1 WITHDRAWING FUNDS FROM BLOCKED ACCOUNT

An order authorizing release from a blocked account may be made ex parte. The petition shall set forth the approximate value of the assets on hand, the approximate value of all assets under impound and the amount of the existing bond the purpose for which the withdrawal is being made. Petitioner should recite any limitations on the use of funds, including all existing court orders. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the Court to determine the amount of the increase. The order may provide for funds to be paid directly to a taxing authority or beneficiary or other person entitled thereto.

Reference: Probate Code §§8480-8488 and §§9700-9705; and California Rules of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 2004, formerly Rule 4.26(b))

4.27 BOND MODIFICATION

Reference: California Rules of Court, Rule 7.204.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.27.1 BOND UPON SALE OF REAL PROPERTY

Reference: California Rules of Court, Rule 7.206.

(Adopted, effective July 1, 2004)

CHAPTER 6
INVENTORY AND APPRAISEMENT

4.28 PROBATE REFEREE APPOINTMENT

A. A Probate Referee will be appointed by the court in all cases when the order for probate is signed. To aid the Court in appointing a probate referee, the information requested in paragraph 4.c of the petition for probate must be completed.

B. Requests that a particular referee be appointed or not be appointed will generally be denied.

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.29 PREPARING INVENTORY AND APPRAISAL

The California Probate Referee's Association has published a pamphlet, *Probate Referees' Procedures Guide,* describing their suggested form for listing various inventory assets as well as their opinion as to whether particular assets should be listed on Attachment 1 or 2. Although not an official publication, this pamphlet is a good reference. Copies are available from any of the probate referees in San Mateo County.

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.30 SUFFICIENCY OF BOND

If there is a bond currently in force, the inventory and appraisement must disclose on its face, at the place on the form above the attorney's signature, whether the amount thereof is sufficient or insufficient. (See Local Rule 4.27 as to the procedure for modifying the bond.)

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.31 WAIVER OF APPRAISAL BY REFEREE

The appraisal by a probate referee may be waived under Section 8903 for "good cause." The decision whether good cause exists will be made by the Court on the basis of the facts set forth in the application. A petition to waive the appraisal by a probate referee must be on a noticed motion. The appointed probate referee shall also be given notice of this motion.

Reference: Probate Code section 8903

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

CHAPTER 7
CLAIMS

4.32 NATURE AND FORM OF CLAIMS

A. Claim versus expense of administration: The Court will not approve "creditors' claims" which represent obligations of the estate arising after the death of the decedent (except reasonable funeral expense). Such expenses are properly expenses of administration, which shall be included for approval in the account.

B. Form of claims

1. Creditors' claims shall be submitted on Judicial Council forms but creditors' claims will be liberally construed in favor of their sufficiency if the content and format are in substantial compliance with the Probate Code. Satisfactory vouchers or proof of

the claim should be attached.

2. Any claim presented for filing more than four months after letters are first issued shall be accompanied by either (1) a copy of the Notice of Administration to Creditors showing that the claim is timely, or (2) a Court Order allowing a late filing of the claim pursuant to Section 9103.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.33 FILING AND LISTING CLAIMS

Reference: Probate Code section 7.403

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.34 APPROVAL BY THE COURT

A. Personal Representative without Independent Powers

Reference: California Rules of Court, Rule 7.401

B. Personal Representative with Independent Powers

Reference: California Rules of Court, Rule 7.402.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.35 REJECTION OF CLAIMS BY PERSONAL REPRESENTATIVE

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

4.36 FUNERAL AND INTERMENT CLAIMS

When interest has been paid in connection with the delayed payment of a claim for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken, setting forth reasons for the delay in payment. The Court will not allow credit for payment of interest where the delay in payment of the claim is not justified by the facts set forth.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.37 CLAIMS OF PERSONAL REPRESENTATIVES AND REIMBURSEMENTS TO PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS

A. Claims. A creditor's claim of the personal representative shall be noted as such. Such a claim must be processed as provided in Section 9252 notwithstanding authority to act under the I.A.E.A. Where there is more than one personal representative, a creditor's claim submitted by one of the personal representatives must be approved by the other(s) before submittal to the Court for approval

B. Reimbursements. Payments to a personal representative as reimbursement for payment by that personal representative of funeral expenses, expenses of last illness, or other debts of the decedent shall be reported to the Court in the same manner as an administrative expense.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.38 COMPROMISE OF CLAIMS

Probate Code section 9830 sets forth the mechanics for formal compromise of claims. The same result may be accomplished more simply by having the personal representative approve the claim in the reduced amount reached by settlement. If the claim had been rejected before the settlement, the rejection may be withdrawn.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

CHAPTER 8
SALES

I. GENERAL INFORMATION

4.39 JUDICIAL APPROVAL

For estates being administered pursuant to the I.A.E.A., judicial approval of sales or exchanges of real or personal property is no longer required (Sections 10500-10503). For estates not being administered pursuant to the I.A.E.A., confirmations of sales are still required. If the personal representative of an estate being administered pursuant to I.A.E.A elects to follow Court supervised procedures, then the sale of real property shall be preceded by statutory notice of sale pursuant to Sections 10300, et seq.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000)

4.40 EXCLUSIVE LISTINGS FOR SALE OF PROPERTY

Section 10150 is authority for a personal representative acting under I.A.E.A. to enter into an exclusive agreement to sell real property without prior court approval. At the hearing on confirmation of sale, the Court will determine the commission (without regard to the terms of the exclusive agreement) and the allocation of it between the brokers involved in the sales.

(Adopted, effective July 1, 1996)

II. SALES OF PERSONAL PROPERTY

4.41 TANGIBLE PERSONAL PROPERTY (PROBATE CODE SECTIONS 10250-10264)

A. Necessity for appraisal: For estates subject to the I.A.E.A., sales of personal property may be made without Court approval. In all other cases the sale of tangible personal property will ordinarily not be approved unless the property has been appraised. For this purpose, a partial inventory and appraisement may be filed or a letter appraisal may be obtained from the appointed probate referee.

B. Commissions: Commissions on sales of tangible personal property will be allowed only to individuals holding a license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the Court's discretion and will not ordinarily exceed a total of 5 percent of the sale price.

(Adopted, effective July 1, 1996)

4.42 SECURITIES

Where proceeding under Section 10200, the petition for authority to sell must set forth a minimum sales price as to all securities except those listed on an established exchange. The minimum price must be a recent market quotation from the over-the-counter market, or if there is no recent market quotation available or the securities are "closely held," the petition must set forth the basis for fixing the minimum sales price.

(Adopted, effective July 1, 1996)

4.43 CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS

A condominium is an interest in real property and must be sold as such, unless it is held as a limited partnership. A community or cooperative apartment is personal property and must be sold as such. However, the overbid on such assets will be computed on the same basis as in sales of real property, and brokers' commissions will be allowed on the same basis as in sales of real property.

The sale of a cooperative apartment will not be confirmed subject to the purchaser later obtaining the acceptance of a Board of Directors or other governing body; therefore, the prospective purchaser should obtain acceptance before seeking court confirmation.

(Adopted, effective July 1, 1996)

III. RETURN OF SALES OF REAL PROPERTY

4.44 PUBLICATION OF NOTICE OF INTENTION TO SELL REAL PROPERTY

A. Procedure: Notice shall be published (pursuant to section 6063(a) of the Government Code unless the Court grants an order shortening time) in all decedents' estates, except those in which there is a power of sale in the will, or those estates administered with full authority under the I.A.E.A. If the personal representative of the estate being administered under I.A.E.A. elects to follow Court supervised procedures, then the sale shall be preceded by statutory notice of sale pursuant to Section 10300 et seq. In all guardianships, conservatorships and court-supervised trusts except those in which the power of sale has been previously granted by the Court the sale shall be preceded by statutory notice of sale. Notice of sale shall be published in a newspaper published in the county in which the real property lies.

If an executor or administrator having power of sale publishes a notice of sale of the real property and proceeds with the sale thereunder, and later a technical defect appears, the defect cannot be cured by exercising the executor's or administrator's power of sale. The executor or administrator must publish a new notice.

B. Contents of Notice: In addition to a legal description of the property, the notice should contain the street address or other common designation of the property, when available. If an exclusive listing has been given, the notice should so state. If the property is to be sold subject to an encumbrance, the notice should so state.

If property is to be sold for cash only, the notice must so state. If the estate would prefer all cash but will accept part cash and part credit, the notice should include the following language: "All cash, or part cash and part credit, the terms and conditions of credit as are acceptable to the fiduciary and the Court.

Effect of Notice: Any offer accepted and returned to court for confirmation cannot be at variance with the terms of sale contained in the notice.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000)

4.45 RETURN OF PRIVATE SALE

A. Appraisal and Reappraisal: In order for a private sale to be confirmed, there must be on file an appraisal of the property or a reappraisal for purposes of sale if the decedent's death or guardian's or conservator's appointment occurred more than one year before the date of the private sale. The appraisal or reappraisal should be on file prior to the hearing date on the return or may be presented at the hearing.

B. Market Exposure of Property: Whenever it is brought to the attention of the Court that the fiduciary has denied bona fide prospective buyers or their brokers a reasonable opportunity to inspect the property, the returned sale will not be confirmed, and the sale will be continued to allow inspection.

C. Second Deeds of Trust: The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

D. Hearing on Return of Sale and Overbid: Counsel must be prepared to state the minimum necessary overbid, computed at the rate of 10 percent of the first $10,000, and 5 percent on the balance of the sale price. Counsel should inform the original purchaser or his agent of the time and place of hearing and advise that they be in court for the hearing.

E. Application of Statutory Formula re Overbid: The Court must consider not only whether the bid is arithmetically the highest, but also whether it is best. Counsel or the parties involved should be prepared with factual information that will aid the Court in making this determination.

F. Earnest Money Deposit by Bidder: No bid for the purchase of real property will be acceptable unless accompanied by a minimum deposit of 10% of the amount bid in cash or its equivalent. When an overbid is made in court, the over bidder must submit 10% of his overbid in cash or its equivalent at the time of the hearing on the return of sale.

G. Overbid Form: The Courtroom Clerk will give counsel a form to be completed on the overbid. This form is to be returned to the Clerk before the end of that morning's probate hearings.

H. Bond: The petition for confirmation of sale of real estate should set forth the amount of the bond in force at the time of sale and the amount of property in the estate which should be covered by bond. If no additional bond is required, or if bond is waived, that fact should be alleged.

I. Absence of Attorney for Estate at Confirmation Hearing: If someone is present who wishes to overbid and the estate's attorney is absent from the hearing, the hearing will be continued for one week, except where the fiduciary is present and requests that the sale proceed without the attorney.

(Adopted, effective July 1, 1996)

4.46 BROKER'S COMMISSIONS

A. Improved Property: The Court will ordinarily allow a broker's commission not to exceed 6 percent of the first $200,000, 5 percent of the next $300,000, and 4 percent of the balance of the sale price. The parties may agree to a lesser percentage.

B. Unimproved Property: The Court will ordinarily allow a broker's commission not to exceed 10 percent of the first $100,000, 8 percent of the next $200,000, and 5 percent of the balance of the sale price. In the Court's discretion, a flat 10 percent may be allowed. In each instance, the Court will determine what is "unimproved" real property.

C. Order Must Show Commission Allocation: The order confirming sale must show the total commissions allowed and any allocation agreed on between brokers. (For examples of allocation of commissions, see Appendix A.)

D. Commission Rates at Property Situs Will Apply: Where the property is not located in San Mateo County, the Court will allow commissions based on the San Mateo County Probate Court schedules unless it is shown that a larger commission would be allowed based on the schedule in effect in the Probate Court of the County in which the property is located.

E. Broker Bidding for Own Account not Entitled to a Commission: A broker bidding for his own account is not entitled to receive or share in a commission. *Estate of Toy* 1977, 72 Cal. App. 3d 392.

(Adopted, effective July 1, 1996)

4.47 BROKER'S COMMISSIONS IN OVERBID SITUATIONS

A. Original Bidder and/or over bidder represented by Broker: Commissions are governed by Probate Code Sections 10161 through 10166. *See also* the Law Revision Comments following those sections.

B. Original Bidder as over bidder: Once a net bid has been overbid in court, the original bidder may elect to be represented by a broker in further bidding.

(Adopted, effective July 1, 1996)

CHAPTER 9
ACCOUNTS

4.48 IN GENERAL

All accounts filed in probate proceedings, which include guardianship, conservatorship, and trust accounts, must be typewritten and must conform to the California Rules of Court (Cal Rules of Ct) adopted by the Judicial Council, including without limitation California Rules of Court, Rules 7.550, 7.901 and 7.902 and the California Probate Code, including sections 1060-1064, 2620-2633, 10900-11051, and 16060-16064.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

4.49 SUMMARY OF ACCOUNT FORM

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

4.50 CONTENTS OF ACCOUNT

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000) (**REPEALED,** effective July 1, 2004)

4.51 REPORTING INCOME AND PRINCIPAL

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

4.52 ALLEGATIONS RE SUFFICIENCY OF BOND

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

4.53 TRUSTEE'S FIRST ACCOUNT

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

4.54 WAIVER OF ACCOUNTING ON FINAL DISTRIBUTION

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

CHAPTER 10
DISTRIBUTION OF PROBATE ESTATE

4.55 DESCRIPTION OF ASSETS

The petition for distribution, whether or not an account is waived, must list assets on hand and list and describe the property to be distributed, either in the body of the petition, by a schedule in the accounting, or in a separate exhibit incorporated in the petition by reference. Description by reference to the inventory is insufficient. Real property shall be described by legal description in the body of the decree of distribution.

(Adopted, effective July 1, 1996)

4.56 ASSET DISTRIBUTION

The petition for distribution must state specifically how the estate is to be distributed. A general allegation that distribution is "in accordance with the terms of the will" or "in accordance with the laws of intestate succession" is insufficient.

The petition must show the computation on which the proposed distributions are based.

Whether or not an accounting has been waived, the decree of distribution must set forth specifically the manner in which the estate is to be distributed by showing the distributee's name and a description of the property or cash, including bank account location, number and amount, to be distributed. Mere reference to the allegations of the petition is insufficient and not acceptable to the Court.

(Adopted, effective July 1, 1996)

4.57 ALLEGATION RE CHARACTER OF ASSETS

Whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property in all cases where the character of the property may affect distribution.

(Adopted, effective July 1, 1996)

4.58 AGREEMENTS FOR DISTRIBUTION OF ASSETS

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be on file a written agreement signed by all parties affected by the distribution.

(Adopted, effective July 1, 1996)

4.59 ASSIGNMENT OF ASSETS

If distribution is to be made to an assignee of an heir, devisee or legatee, the assignment and the terms thereof must be on file. (See Section 11604.)

(Adopted, effective July 1, 1996)

4.60 ALLEGATIONS RE HEIRS OF PREDECEASED SPOUSE WHEN DECEDENT DIES INTESTATE

If an intestate decedent leaves neither issue nor surviving spouse and the decedent had a predeceased spouse, the petition must either set forth the names, addresses and line of blood relationships of the heirs who take by virtue of Sections 6402 and 6402.5 or affirmatively allege that there is no heir who takes by virtue of either section.

(Adopted, effective July 1, 1996)

4.61 DISTRIBUTION TO PERSONS UNDER CONSERVATORSHIP OR GUARDIANSHIP

The decree should provide for distribution of the property to the minor or the conservatee rather than to the guardian or conservator, but must provide that actual payment or delivery be made to the guardian or conservator.

(Adopted, effective July 1, 1996)

4.62 DISTRIBUTION TO MINORS

Where delivery of the assets is to be made to the minor's parent pursuant to Section 3401, the declaration by complying with the provisions of that section must be on file before the decree is signed.

Where a depository is to be used, the receipt and agreement of the depository must be filed as required under Section 2328.

If distribution is made to a custodian under Section 3900 et seq., a declaration complying with the appropriate section thereunder must be on file.

(Adopted, effective July 1, 1996)

4.63 DISTRIBUTION TO REPRESENTATIVE OF DECEASED HEIR OR BENEFICIARY

When an heir or beneficiary dies during the administration of an estate, the decree shall provide for distribution to the personal representative of his estate (Sections 11801 and 11802) or, where applicable to the person(s) entitled thereto under Sections 13100-13105.

(Adopted, effective July 1, 1996)

4.64 DISTRIBUTION TO INTESTATE HEIRS

The relationship of heirs who take by intestacy shall be sufficiently described to permit the Court to determine whether the laws of intestate succession have been properly applied. If an heir takes by right of representation, the petition must indicate parentage and the approximate date of the parent's death.

(Adopted, effective July 1, 1996)

4.65 INTEREST ON GENERAL PECUNIARY LEGACIES

The Court will strictly enforce the policy set forth in Sections 12000-12007 and *Estate of Hubbell* (1932) 216 Cal. 574, and will order payment of interest at the statutory rate on all general pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will.

(Adopted, effective July 1, 1996)

4.66 REQUIREMENTS RE: FINAL DISTRIBUTION

A. Allegations re Creditor's Claims: The petition for final distribution (whether or not on waiver of accounting and whether or not the personal representative is acting under the I.A.E.A.) must list all creditors' claims presented and indicate the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection must be stated, as well as its disposition, whether by suit or otherwise. This information must be set forth in the petition for final distribution even though it may have been presented to the Court in whole or in part in prior accountings or petitions for distribution.

B. Allegations relating to Independent Acts: The petition for final distribution must list and describe all independent acts taken without prior court approval and must contain an allegation that the 15-day advice of proposed action was waived or duly served when required and that no objections were received. Sections 10587-10591. The originals of the advice of proposed action with attached declarations of mailing must be available but need not be filed with the Court. If certain acts have been properly reported in a prior petition for distribution, they need not be repeated.

C. Retention of a Reserve: The decree of final distribution must specifically set forth the use that may be made of retained funds (e.g., income taxes, closing costs, etc.).

D. No petition for final distribution will be accepted for filing or considered by the Court unless an inventory and appraisement marked final or complete has already been filed.

E. No petition for distribution will be granted whereby any portion of an estate is distributed to a nonresident, without a certificate from the Franchise Tax Board where required by law because of the value of the estate or the assets distributable to such nonresident. See Revenue and Taxation Code §19513 and applicable regulations for dollar amounts.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000)

4.67 TAX PROCEDURES RE FINAL DISTRIBUTION

The petition for final distribution must address the question of the source of the payment of the federal estate tax and California estate tax, if any. If the will has a clause directing the payment of the taxes out of the residue of the estate, this should be so alleged. If, on the other hand, there is no tax clause or there is a tax clause which does not direct the source of payment, the amounts required to be prorated or charged must be stated.

(Adopted, effective July 1, 1996)

4.68 PRELIMINARY DISTRIBUTION UNDER SECTION 11621

In addition to the requirements contained elsewhere in this chapter, the petition must state the approximate net value of the property remaining in the estate after the proposed distribution and an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities. The Court prefers an inventory and appraisement which includes the property to be distributed be on file.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000)

CHAPTER 11
MISCELLANEOUS PETITIONS AND ORDERS

4.69 FAMILY ALLOWANCE (SECTIONS 6540-6545)

A. Necessary Allegations of Petition: All petitions for family allowance must state facts to show that the allowance prayed for is necessary and reasonable, including:

(1) The nature and separate or community character of the probate estate and whether or not it is solvent;

(2) Whether others are entitled to family allowance;

(3) The approximate needs of the applicant, with reference to his or her standard of living and

(4) The applicant's income from other sources.

B. Duration of Family Allowance. All orders will limit family allowance to a definite period of time. If the order is on an ex parte petition, family allowance will normally not be granted for a period exceeding six months.

C. Under Section 6540(a): Before an inventory is filed, an order for a family allowance under Section 6540(a) may be made or modified ex parte or on noticed hearing; after an inventory is filed, such an order may be made or modified only on noticed hearing, as provided by Section 6541(b).

D. Under Section 6540(b): An order for a family allowance under Section 6540(b) may be made or modified only on noticed hearing, as provided by Section 6541(c).

(Adopted, effective July 1, 1996)

4.70 BORROWING MONEY (SECTIONS 9800-9807)

A. Inventory Must Show Security: If the loan is to be secured, an inventory describing the security must be on file prior to the hearing.

B. Bond Requirements: The petition under Section 9800 must state whether the personal representative is serving with or without bond. If with bond, the Court must be advised—either in the petition or by supplemental declarations filed before the hearing, or by testimony at the hearing—as to the necessity for an increase in the bond.

(Adopted, effective July 1, 1996)

4.71 OPERATING A BUSINESS (SECTION 9760(C) AND (D))

A separate order prescribing the notice to be given under Section 9760(c) and (d) must be presented to the Court before the petition is filed. The Court may prescribe any reasonable notice, but does not have the power to dispense with notice. Ordinarily, the Court will prescribe that at least 15 days' notice must be given to the principal creditors and beneficiaries who might be affected.

(Adopted, effective July 1, 1996)

4.72 DETERMINING TITLE TO REAL OR PERSONAL PROPERTY (SECTION 9860)

All notices of hearing given under Section 9860 must contain a description of the property sufficient to give adequate notice to any party who might be interested in the property, including with respect to real property, the street address, or if none, an indication of its location.

(Adopted, effective July 1, 1996)

4.73 SUBSTITUTION OR WITHDRAWAL OF ATTORNEY

If an attorney wishes to withdraw from a probate proceeding as the attorney of record, he may do so by filing a noticed motion, a substitution of attorneys, or a notice of withdrawal consented to by the personal representative and containing the address of the personal representative or the substituted attorney.

(Adopted, effective July 1, 1996)

4.74 OBTAINING FINAL DISCHARGE

To assist the Court in determining whether final discharge should be ordered, counsel shall submit to the Court, along with the declaration and order for discharge, a copy of the judgment of final distribution and of all receipts of the distributees. The "order" portion shall be completely filled in except for the date and name of the judge.

(Adopted, effective July 1, 1996)

4.75 PROCEEDINGS TO ESTABLISH FACT OF DEATH (SECTIONS 200-204)

A. Filing Under Name of Decedent: A petition to establish the fact of death must be filed in the name of the deceased person whose interest is to be terminated.

B. Separate Petition Preferred: Although Section 202(b) authorizes a petition to establish the fact of death to be included in a verified petition for probate of will or for letters of administration (but does not authorize such a petition to be included in any other petition, such as a petition for final distribution), for convenience of administration, attorneys are encouraged to file the petition as a separate petition.

C. Description of Property: If the property affected is realty, a copy of the document showing the decedent's interest must be attached to the petition and incorporated therein, or the verified petition must set forth the entire instrument vesting title, including the recordation data. If the property affected is personalty, the location and description of the property and the decedent's interest therein must be set forth with particularity.

D. Attorneys' Fees: There is no provision in the Probate Code for allowance of attorneys' fees in proceedings to establish the fact of death. The attorney should make fee arrangements directly with the client.

If a surviving joint tenant failed during his lifetime to establish the fact of death of a previously deceased joint tenant, an extraordinary fee may be awarded in the probate proceeding involving the surviving joint tenant for those services performed after the death of the surviving joint tenant.

(Adopted, effective July 1, 1996)

CHAPTER 12
GUARDIANSHIPS AND CONSERVATORSHIPS

4.76 Temporary Conservatorships

A. In exigent circumstances, petitions may be presented ex parte between 2:00-3:30 p.m. (M, T, W, Th, F). On those days that the Probate Presiding Judge is not available, the petitioner shall present his/her petition to the court's Presiding Judge or the judge designated to hear ex parte matters. A separate petition for the appointment of a regular conservator must first be on file

and a hearing date assigned before a petition for temporary conservator will be considered. Forms necessary for temporary appointment of conservator are as follows:

(1) Petition for Appointment of Temporary Conservator (GC-110);

(2) Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator (Judicial Council form GC-112) and Order on Ex Parte application (Judicial Council form GC-115);

(3) Ex Parte Order Appointing Temporary Conservator (GC-140);

(4) Proof of service regarding 5-day personal service of ex parte petition to proposed conservatee (if matter contested); and

(5) Letters of Temporary Conservatorship (GC-150) and Temporary Bond Certificate (for estates).

B. Prior Review and Filing

(1) Both temporary and permanent conservatorship petitions and subsequent filings must be filed at the Probate Clerk's office before presentation to the Court. All filings regarding conservatorships must be accompanied by an original and two copies.

(2) All petitions for temporary conservatorships must be submitted to the Probate Clerk's Office for review by the Court Investigator's Office prior to it being presented to the judicial officer for review. It is recommended that an appointment for review of the documents by the Court Investigator be made before submission to the clerk by calling 363-4351. After the Court Investigator's review of the papers, a recommendation will be made to the Court that will accompany the petition to be presented to the judicial officer for review and ruling.

C. Grounds: The emergency nature of the facts which are alleged as good cause for the appointment must also be alleged. Petitions must be signed by the petitioner(s). (California Rules of Court, Rule 7.103.)

D. Bond: Unless waived pursuant to 8481(a), full bond in accordance with Sections 8480-8482 will normally be imposed upon a non-corporate temporary conservator of the estate; if a lesser amount is requested, good cause must be shown in the petition. The Court may in certain cases require a bond of a temporary conservator of the person.

E. Notice: Notice of the ex parte hearing must be given to the proposed conservatee (Probate Code, Section 2250) and the persons listed in Probate Code, Sections 1821 and 1822. Notice and the declaration regarding notice must comply with CRC 3.1200-3.1207, and must state whether any person entitled to notice objects to the hearing. Reasons for shortening or dispensing with statutory notice must be alleged.

F. Length of Appointment: A temporary conservator will not be appointed for a period exceeding 30 days or the date of the hearing assigned for the regular petition, whichever is later. It may be extended for good cause shown by written order of the Court.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)(Amended, effective July 1, 2006) (Amended, effective January 1, 2007) (Amended, effective January 1, 2009) (Amended, effective July 1, 2009)

4.77 GUARDIANSHIPS

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000; **REPEALED**, effective July 1, 2004 [See new Rules 4.77.1 to 4.77.17])

4.77.1 PETITION FOR GENERAL GUARDIANSHIP

A petition may be filed for a guardianship of the person, guardianship of the estate, or both. This petition must be filed in all cases, even if the guardianship is needed for a short period of time. A packet of blank guardianship forms, including a list of all documents required to be filed with the Superior Court in San Mateo County and information regarding the procedures for proper service of notification (PR-20) is available from the Superior Court Clerk's Office, Room A, 400 County Center, Redwood City, and on the Internet at www.sanmateocourt.org. Each of the forms must be completed in its entirety, copied, and returned to the Clerk's office for filing before the Probate Clerk will assign a case number and set a hearing date. A case number and hearing date will be assigned by the Counter Clerk as part of the filing process.

1. The following documents (an original and two (2) copies) must be submitted with the initial filing:

a. Notice of Hearing (GC-020)

b. Petition for Guardianship (GC-210)

c. Confidential Guardian Screening Form (GC-212)

d. Guardianship Affidavit, Questionnaire, and Declaration (San Mateo County Local Form PR 18)

e. Declaration Under UCCJEA (FL-105/GC-120)

f. Notification to Court of Addresses for Guardianships (San Mateo County Local Form, PR-2)

g. Consent of Guardian, Nomination and Waiver (GC-211) - this is a multi-purpose form, and must be submitted for the "Consent" of the guardian. The nomination and/or waiver provisions are optional. This form may be submitted in counterpart.

h. Duties of Guardian (GC-248)

2. All documents will become part of the public record, with the exception of the Guardianship Affidavit, Questionnaire, and Declaration (PR-18) and the Confidential Guardian Screening Form (JC-GC 212) (confidential except by court order—see California Rules of Court, Rule 7.1001).

3. All filings must consist of an original and two (2) copies. Signatures must be in blue ink. The clerk will retain the original and one (1) copy of all documents. (The clerk will deliver the copy to the Court Investigators). The second copy will be stamped "endorsed filed" and will be returned to the filing party for his/her records,

4. The Guardianship Affidavit, Questionnaire, and Declaration (Local Form) should include the following information to assist the Court Investigators and the Court:

a. specific reasons why parents are not suitable

b. complete legal name, any other names used for the minor

c. development of the minor, whom minor has resided with since birth, and any special emotional, psychological, or physical needs; and ability of guardian to meet these needs.

d. daycare arrangements, if any; name, address and telephone number of person or facility providing care

e. schooling/education plan and any special needs

f. housing arrangements, own room or sharing

g. financial support and source

h. name and telephone number of physician

i. other relevant information (facts which should be revealed to the court but which the petitioner wishes to have remain confidential should be addressed to the Court Investigator and labeled, "For Confidential Use Only.")

5. It is recommended that every petitioner purchase a copy of the film, Becoming a Guardian, produced by the Judicial Council and the Superior Court, County of Solano. The video, DVD, or CD-ROM version of the film is available from the Probate Clerk's Office at a minimal cost. A copy of the video is available for viewing at the Clerk's Office in the Self-Help Center at the Hall of Justice.

(Adopted, effective July 1, 2004 [formerly Rule 4.77 (a), (c), and (d)]) (Amended, effective July 1, 2006)

4.77.2 HEARING DATES

A. A hearing date will be assigned at the Court Clerk's Office, Room A when the documents are filed. Guardianship matters are heard Monday, Tuesday, Thursday and Friday at 9:00 a.m.

B. Possible hearing dates may be inserted into the documents in advance after telephone inquiry from the Clerk [650-363-4711]; but dates inserted in advance do not reserve a place on the Court Calendar, and may be subject to change at the time of actual filing.

C. Continuances. See Local Rule 4.1 above.

D. Order shortening time. All applications for Order shortening time shall be submitted in the Court Clerk's Office, Probate Department rather than the Law and Motion Department.

(Adopted, effective July 1, 2004)

4.77.3 SERVICE OF DOCUMENTS

A. It is the responsibility of the petitioner to arrange for service of the notice of the hearing of the petition as set forth in Probate Code §1511, including a copy of the petition if required, unless a written waiver of notice is filed.

B. The service must be completed by a person other than the petitioner. The server must complete a written Proof of Service.

C. A written Proof of Service (an original and two copies) must be filed with the Court Clerk's Office, Room A, prior to the court hearing. If service is required on more than one person, a separate Proof of Service may be submitted for each service.

D. A copy of the notice, petition, and Guardian Screening form shall be mailed to youth and Family Services 400 Harbor Blvd., Belmont, CA at least fifteen (15) days prior to the hearing.

E. For petitions filed by non-relatives, a copy of the notice of hearing and petition must be mailed to the Director of Social Services in Sacramento, California at least fifteen (15) days prior to the hearing.

(Adopted, effective July 1, 2004)

4.77.4 PROOF OF SERVICE OF THE NOTICE OF HEARING

A written proof of service must be filed with the Probate Clerk, Room A, at least five court days in advance of the hearing date unless otherwise waived.

(Adopted, effective July 1, 2004)

4.77.5 PERSONAL APPEARANCE

All petitions for general guardian will require an appearance by the petitioner(s). See Local Rule 4.6, above. The petitioner, the attorney (if any) and the proposed ward if age 12 or older, shall be present. Young children should be left at home or in the Court day care center, on the second floor of the Courthouse in Redwood City, unless otherwise ordered by the Court.

(Adopted, effective July 1, 2004)

4.77.6 MULTIPLE WARDS

A. The Court will not appoint a guardian for several wards on a single petition and under the same file number unless the minors are full siblings. Separate proceedings must be commenced for nonsiblings or half siblings. For sibling cases filed at the same time, only one filing fee will be required.

B. A separate Inventory and Appraisement shall be filed for the interests of each ward in cases where multiple wards are listed under one case number.

C. Separate accountings shall be filed for each ward subject to a guardianship of the estate.

(Adopted, effective July 1, 2004 [formerly 4.77(b)])

4.77.7 INVESTIGATION OF GUARDIANSHIP AND FILING OF REPORTS

A. It is the policy of the Superior Court in San Mateo County to conduct an investigation in all guardianship cases. Unless waived by the Court, an investigative report must be given to the Court prior to the appointment of a general guardian of the person and/or the estate, pursuant to Probate Code §1513(a).

B. In all cases where the proposed guardian is a relative, the Chief Court Investigator shall assign an Investigator who will conduct the investigation and file a written report at least five (5) court days prior to the hearing date.

C. In all cases where the proposed guardian is a non-relative, the Department of Youth and Family Services will conduct the investigation and file a written report at least five (5) court days prior to the hearing date. "Relative" is defined at Probate Code section 1513(g).

4. If the petition is filed at the recommendation of the Department of Youth and Family Services, the petition shall refer to that Department's recommendation, and the Department shall furnish to the Court a copy of their Investigation Report, medical or educational evaluations, or other relevant documents concerning the minor upon which they based their recommendation. In this event, a Court Investigator would not need to be appointed for a further investigation and report.

(Adopted, effective July 1, 2004)

4.77.8 FACTORS TO BE ADDRESSED IN GUARDIANSHIP INVESTIGATIVE REPORTS

In addition to the factors set forth in Probate Code §1513(a), the Investigation shall include:

A. An in-person interview with the minor(s), the parent(s), and proposed guardian(s). If a parent is not available for a personal interview, the report shall explain the circumstances and any contacts with the parent.

B. Telephone or written communication (as possible) with collateral contacts, such as school teachers, daycare providers, neighbors, relatives, and other interested parties.

C. A visit to the home of the proposed guardian.

D. If a parent objects to the guardianship, a visit to the home of the parent.

E. A criminal records check on the parent(s), the proposed guardian, and any other person over fifteen (15) years who inhabits the guardian's home.

(Adopted, effective July 1, 2004)

4.77.9 ALTERNATIVE GUARDIAN

A. If neither the parent(s) nor the proposed guardian is found to be an appropriate caretaker for the minor, the matter shall be referred to Youth and Family Services to determine if there is another appropriate adult who will agree to act as guardian. That adult will be instructed to file a separate guardianship petition for consideration by the Court.

B. If no appropriate and willing adult is located to act as guardian, then the Department of Youth and Family Services shall initiate a petition in the Juvenile Court pursuant to Welfare & Institutions Code §300.

(Adopted, effective July 1, 2004)

4.77.10 ORDER APPOINTING GUARDIAN

A. It is the responsibility of the petitioner to prepare all proposed orders. An original and two copies of the proposed order appointing guardian should be delivered to the Court Clerk's Office in Room A at least five court days before the hearing.

B. The Court will fix a non-appearance hearing date for filing of the Inventory & Appraisal and/or Receipt of Funds in Blocked Accounts for all guardianships of the estate.

C. A fee will be assessed for Court Investigation unless deferred or waived by the court. The amount of the fee shall specified in the order appointing guardian.

(Adopted, effective July 1, 2004)

4.77.11 GUARDIAN OF THE ESTATE

The guardian of the estate shall be required to comply with the Local Rules applicable to conservators of the estate. See Local Rules of Court, Rules 4.81.13 through 4.81.18 below.

(Adopted, effective July 1, 2004)

4.77.12 CURRENT ADDRESSES/RELOCATION

All attorneys and guardians are required to keep the Court informed of their current addresses and phone numbers as well as the current address and phone number of the ward.

A child subject to guardianship shall not be relocated outside the State of California without a court order. See Probate Code Section 2352.

(Adopted, effective July 1, 2004)

4.77.13 REVIEW OF GUARDIANSHIP

Guardianships will be reviewed annually. At the time of the granting of the petition for general guardianship, a twelve-month review date will be set. The guardian will be instructed by the Court to execute and return a "Confidential Guardianship Status Report" form (Judicial Council form GC-251) to the Court Investigator's Office by the designated review date. The Court may calendar further review dates, if needed. The party must execute and return to the Court their "1513.2 Statement" by the designated review date.

(Adopted, effective July 1, 2004)

4.77.14 Temporary Guardianship—Emergency Situations Only

A. If temporary guardianship is necessary, the court may consider the application with a short notice period (5 days) or no notice (ex parte). In exigent circumstances, petitions may be presented ex parte between 2:00-3:30 p.m. (M, TU, W, TH,F) On those days that the Probate Presiding Judge is not available, the petitioner shall present his/her petition to the court's Presiding Judge or the judge designated to hear ex parte matters. It is the policy of the Court not to change the residence of the proposed ward absent exigent circumstances and a recommendation by the Court Investigation unit.

B. All the forms for a general guardianship must be submitted before a petition for temporary guardianship will be granted. The additional forms necessary for a temporary guardianship (original and two copies) are:

1. Petition For Appointment Of Temporary Guardian. (GC-110)

2. Order Appointing Temporary Guardian or Conservator (GC-140)

3. Letters of Temporary Guardianship (GC-150)

4. Duties of Guardian (GC-248)

5. Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator (Judicial Council form GC-112) and Order on Ex Parte application (Judicial Council form GC-115)

C. The petitioner and the attorney, if any, should be present when a temporary guardianship is requested. A proposed ward age twelve (12) or older, should be present. D. The Petition for General Guardianship and supporting documents must be filed and the fee paid before a Petition for Temporary Guardianship is filed with the Court for consideration

E. Filing and Prior Review of Documents

1. All documents shall be filed with the Court Clerk's Office, Room A, at the Probate counter at 400 County Center, 1st floor, Redwood City.

2. All petitions for temporary guardianship must be submitted to the Probate Clerk's office for review by the Court Investigator's office prior to it being presented to the judicial officer for review. It is recommended that an appointment for review of the documents by the Court Investigator be made before submission to the clerk for filing by calling (650) 363-4351. After the Court Investigator's review of the papers, a recommendation will be made to the Court, which will accompany the petition to be presented to the judicial officer for review and ruling.

F. If the party seeking to be appointed guardian knows of an objection to the petition for temporary, he or she must advise the Court.

G. If the Court grants the petition appointing temporary guardian, the order will be filed and the Clerk will issue the Letters of Temporary Guardianship. The order will specify an expiration date for the Letters which will usually coincide with the date set for hearing of the general guardianship.

H. After Letters are issued by the Clerk, certified copies may be purchased for a small fee.

(Adopted, effective July 1, 2004) (Amended, effective July 1, 2005) (Amended, effective July 1, 2006) (Amended, effective January 1, 2009) (Amended, effective July 1, 2009)

4.77.15 ACCOUNTS AND REPORTS

A guardian of the estate shall file a Confidential Guardianship Status Report" form (Judicial Council form GC-251) to accompany any account and report OR for request for release of blocked funds. For general rules on accounts see Chapter 9 of these Rules.

(Adopted, effective July 1, 2004)

4.77.16 FEES FOR GUARDIAN AND FOR ATTORNEY FOR GUARDIAN

A. Refer to Cal Rules of Ct, Rule 7.751

B. Fees for attorneys for guardian of the person, when there is no guardianship of the estate, shall be a matter of contract between the attorney and the guardian and not subject to court supervision. Attorney's fees for guardian of the person and/or estate which are to be paid from the estate of the ward are subject to court approval and shall be computed and paid as set forth herein at California Rules of Court, Rule 7.751.

C. If all the estate funds will be placed in blocked accounts, the Petition for Guardianship may include a contemporaneous request for attorney's fees incurred to establish the guardianship. In these circumstances, the order of appointment should specify the name and address of the bank where the funds shall be deposited and shall authorize the bank to disburse fees of a specified amount before the account balance is blocked.

(Adopted, effective July 1, 2004)

4.77.17 DISCHARGE

A. Discharge of the guardian of the person is not required. Upon the ward attaining the age of 18, the guardianship of the person expires by operation of law.

B. Discharge of the guardian of the estate will first require the submission of a final account.

C. After approval of the account, a separate declaration for final discharge must be submitted, together with the Receipt executed by the former ward and a photocopy of the order settling the final account and ordering delivery of assets to the former ward. The declaration must state the date on which the ward reached majority.

(Adopted, effective July 1, 2004 [formerly Rule 4.77(e)])

4.78 USE OF MINOR'S ASSETS FOR SUPPORT

A. In Guardianship Cases: If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education. (Section 2422.) The petition must set forth the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets. Such petition may be included in a petition for the appointment of a guardian. An order granting such petition **shall** be for a limited period of time, usually not to exceed 6 months, or for a specific and limited purpose.

B. Funds in Blocked Account in Non-Guardianship Cases: A request for withdrawal of amounts necessary for the minor's support may normally be made ex parte if accompanied by a sufficient showing of the need. However, where the minor has a living parent, the petition must contain the allegations referred to in Subsection (a) above; in such cases the Court may require the obtaining of an order prescribing notice and a calendared hearing.

(Adopted, effective July 1, 1996)

4.79 DISPOSITION OF MINOR'S FUNDS (SECTIONS 3410-3413)

A. Contents of Petition: A petition under these sections must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement of the reasons that the requested relief will best serve the interests of the minor.

B. Notice: The petition may be presented ex parte if the only relief sought (other than reimbursement for filing fee and award of reasonable attorneys' fees) is to deposit funds in a blocked account and the amount involved does not exceed $20,000. Otherwise the petition must be noticed.

C. The Order: Where the minor's funds are to be deposited in a blocked account, the order must provide that the person holding funds shall disburse the ordered amount of fees and costs, if any, directly to the person(s) entitled thereto and disburse the balance to the selected depository, whose name and address must be specified. The order must also provide that the receipt by the

depository of the funds and a copy of the order must be filed forthwith upon the deposit of the funds. The receipt must acknowledge that the funds may be withdrawn only on court order.

D. Orders for Withdrawal of Impounded Funds: Where withdrawal is sought because the minor has reached majority, and the order establishing the blocked account is not self-executing, a certified copy of the minor's birth certificate or other convincing evidence of the minor's age must be presented with the petition for withdrawal. The order must provide for the payment of the funds only to the former minor.

(Adopted, effective July 1, 1996)

4.80 COMPROMISE OF CLAIMS

(See generally Sections 2500-2507; 3500-3612; Code Civ. Proc. Section 372; Cal. Rules of Court Section 241)

A. Court to Which Addressed

(1) Where the claim is the subject of a pending action, approval must be by the court to which the matter was assigned for trial or settlement, if any; otherwise, approval must be by the Probate Court in accordance with subparagraph (2) below.

(2) Where the claim is not the subject of a pending action and approval is sought in this county, it **shall** be addressed to the Probate Court, and if there is a guardianship or conservatorship proceeding pending, the approval must be had in that proceeding;

(3) In cases where the trial or settlement court has approved the basic settlement and compromise, the matter of the disposition of the net recovery may be referred to the Probate Court under Section 3600 *et seq.*

B. Contents of Petition to be presented to the Probate Court: In addition to the requirements of Section 2506 and Cal. Rules of Court Section 241, the petition for compromise of a claim for a minor should show the date of birth of the minor, the minor's place of residence, and the names and addresses of the minor's parents. Current medical reports, giving a diagnosis and prognosis of the minor's or conservatee's condition should be attached to the petition or submitted to the Court at the time of the hearing.

C. Notice re Probate Court matters: Where the claim is that of a minor and there is no guardianship of the estate and the only relief sought (other than reimbursement for reasonable expenses, costs and attorneys' fees) is to deposit the net recovery in a blocked account and the net recovery does not exceed $20,000, the petition may be presented ex parte. In such cases the minor as well as the petitioner must be present.

D. Order: If the net proceeds received on behalf of a minor are to be made the subject of an impound, the requirements contained in Local Rule 4.79(c) are applicable. If the order deals with the compromise of claims of more than one minor, the interest of each minor must be separately stated, and the order must provide that there should be no commingling or combining of such interests.

E. Attorneys' Fees: Except for good cause shown, attorneys' fees in excess of 25% of the net settlement proceeds will not be allowed.

(Adopted, effective July 1, 1996)

4.81 CONSERVATORSHIPS

(Adopted, effective July 1, 1996, Amended, effective January 1, 1999; effective January 1, 2000; **REPEALED**, effective July 1, 2004) (See new Rules 4.81.1 to 4.81.21)

4.81.1 Petition for Appointment of a Conservator

A. A petition for establishment of a conservatorship requires the following forms:

(1) Petition for Appointment of Probate Conservator (GC-310);

(2) Confidential Supplemental Information (GC-312);

(3) Notice of Hearing (GC-020);

(4) Order Appointing Court Investigator (GC-330);

(5) Capacity Declaration-Conservatorship (GC-335);

(6) Dementia Attachment to Capacity Declaration (GC-335A)

(7) Citation (GC-320);

(8) Confidential Conservator Screening (GC-314);

(9) Duties of Conservator and Acknowledgment of Receipt of Handbook (GC-348);

(10) Conservatee's Information and List of Relatives (Local Court Form PR-1); and

(11) Appointment of Probate Referee (Estate) local form.

B. All filings regarding initial conservatorship petitions [initial petitions and supporting documentation, amended petitions or other amended supporting documents] or Petition for Independent Powers must consist of an original and three copies of each document stated herein. Signatures should be made with blue ink. The Clerk will retain the original and two copies of all documents filed. (The Clerk will deliver the copies to Court Investigators.) The third copy will be returned to the party for his or her records, stamped "endorsed-filed". The information contained in the Confidential Supplemental Information and Confidential Conservator Screening are not part of the public record.

C. Subsequent filings regarding conservatorships [accountings, confidential status reports, other petitions or documents] must consist of an original and two copies. Signatures should be made with blue ink. The clerk will retain the original and one copy of all documents filed. (The clerk will deliver the copy to the Office of the Court Investigator.) The second copy will be returned to the party for his or her records, stamped "endorsed-filed".

D. Petitions requesting Dementia Authority Powers, filings must consist of an original and three copies of all required documents. (The clerk will deliver two copies to the Office of the Court's Investigator). Reference: Probate Code section 1821; California Rules Of Court, Rule 7.1050; and Local Rule §.4.81.10.

(Adopted, effective July 1, 2004 [former Rule 4.81(a)]) (Amended 1/1/05)(Amended, July 1, 2005) (Amended, effective January 1, 2009)

4.81.2 NOTICE

A. On Petition for Appointment of Conservator: There is no statutory basis for shortening the time of notice or for dispensing with notice on a petition for the appointment of a conservator. If the petition alleges that there is no relative of the proposed conservatee within the second degree, notice shall be given to all adult relatives within the third degree who reside in California. Reference, Probate Code section 1821 and California Rules of Court, Rules 7.51-7.53.

B. For petition of appointment of a temporary conservatorship, or for ex parte matters, a declaration regarding notice is required. Reference; California Rules of Court, Rules 3.1200-3.1207.

C. When an attorney has been appointed to represent a conservatee, regardless of the purpose of the appointment, notice of all hearings including requests for ex parte relief shall be given to the appointed attorney. If any other petition is pending when the attorney is appointed, and a future hearing date has already been assigned, the petitioner shall promptly forward a copy of the notice and petition to the appointed counsel. If the appointed attorney is discharged, then no further documents need be served on the attorney.

(Adopted, effective July 1, 2004 [formerly Rule 4.81 (d)]) (Amended, effective January 1, 2007)

4.81.3 Guardians, Conservators and Trustees Qualifications

Qualifications for conservators: Both Private Non-professional and Private Professional Conservators provide a valuable service to the community and to the conservatees. All conservators must complete education classes as part of qualifying to serve as a conservator in San Mateo County.

A. Private Non-professional Conservators and Trustee

1. Conservator of the Person

a) A private non-professional conservator of the person within six (6) months of appointment must complete a three (3) hour course covering the duties and responsibilities of a conservator of the person. The conservator must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

2. Conservator of the Estate

a) A private non-professional conservator of the estate within six (6) months of appointment must complete a three-hour course covering the duties and responsibilities of a conservator of the estate. The conservator must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

3. Trustee

a) A private non-professional trustee within six (6) months of appointment must complete a three-hour course covering the duties and responsibilities of a trustee of a trust. The trustee must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

B. Court Appointed California Licensed Professional Fiduciary

1. In order to be a Court Appointed California Licensed Professional Fiduciary as a conservator or trustee by the Superior Court of California, County of San Mateo, as of 01 July 2008, the Professional Fiduciary must meet be licensed by the Professional Fiduciaries Bureau of the State of California. Requirements for initial licensing include completing thirty (30) hours of approved education courses and passing the State of California Professional Fiduciary Bureau licensing examination. For further licensing requirements, see the Professional Fiduciaries Bureau website at www.fiduciary.ca.gov.

2. Continuing Education

As of 01 July 2008, California Licensed Professional Fiduciary must complete:

— A minimum of fifteen (15) hours of continuing education credit each year for licensing renewal; and

— Must abide by the new Professional Fiduciaries Code of Ethics (see the Professional Fiduciaries Bureau website at www.fiduciary.ca.gov.

(Adopted, effective July 1, 2004) (Amended, effective January 1, 2009) (Amended, effective July 1, 2009)

4.81.4 SPECIAL REQUIREMENTS ON APPOINTMENT OR TERMINATION OF CONSERVATOR

A. There shall be a court investigation of all petitions, to establish conservatorships to add a coconservator or appoint a successor conservator.

B. A court investigation of a petition to terminate conservatorships is not required unless so ordered by the court. A limited investigation may be ordered by the court pursuant to Probate code section 1826(p).

C. When an initial petition for conservatorship is filed, and at any future time when conservatorship documents are filed, the Clerk will retain a copy, and will deliver the copy to the Court Investigator. (Parties should submit an original and two copies of any document in order to receive back an "endorsed-filed" copy.)

(Adopted, effective July 1, 2004 [former Rule 4.81 (c)]) (Amended, effective July 1, 2006)

4.81.5 General Plan

Upon appointment, Conservators shall be required to file a Confidential Level of Care/General Plan (Local Court Form PR-22) with the Court within 90 days of appointment. Probate Code §2352.5 requiring the filing of a Level of Care Determination within sixty (60) days of appointment is satisfied by filing the Level of Care/General Plan document (Local Court Form PR-22). The plan shall address in detail the issues identified by the court at the appointment hearing. It shall include matters that have been resolved as well as those that are outstanding and what steps currently are being taken to reach a resolution. A local form "Confidential Level of Care/General Plan" (Local Court form PR-22) shall be submitted and the conservator may submit a more detailed pleading as appropriate under the circumstances.

The Public Guardian is exempted from this Rule and shall report annually to the Court on its policy and practice.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(g)]) (Amended, effective July 1, 2009)

4.81.6 LETTERS OF CONSERVATORSHIP OF THE ESTATE

The conservator is advised to record letters of conservatorship of the estate in any county where real property owned by the conservatee is located. Reference: Probate Code Section 1875.

(Adopted, effective July 1, 2004)

4.81.7 Changes of Address

The conservator must promptly file a revised notice with the Court of any change of address or telephone number of the conservator, the conservatee, or the attorney for the conservator using the court's local form "Conservatee's Information and List of Relatives" (Local Court Form PR-1).

(Adopted, effective July 1, 2004 [formerly Rule 4.81(f)]) (Amended, effective January 1, 2009)

4.81.8 California Licensed Professional Fiduciaries

A California Licensed Professional Fiduciary or trustee as defined in Probate Code section 2341, must be licensed by the Professional Fiduciaries Bureau of the State of California in order to continue to function as a Professional Fiduciary as of January 1, 2009. For licensing requirements, see the Professional Fiduciaries Bureau website at www.fiduciary.ca.gov. A listing of California Licensed Professional Fiduciaries is available on the Professional Fiduciaries Bureau website listed either by county or by name. Fiduciaries are only listed in the county in which their business address is located.

(Adopted, effective July 1, 2004)(Amended, effective January 1, 2009) (Amended, effective July 1, 2009)

4.81.9 WAIVER OF BOND

A waiver of bond by a conservatee shall be in writing. In addition, the conservatee should be prepared to reaffirm his or her waiver in open court and to describe the circumstances surrounding the execution of the written waiver. Reference: Probate Code section 2321.

(Adopted, effective July 1, 2004 [former Rule 4.81(e)])

4.81.10 REQUEST FOR DEMENTIA POWERS

A. Required Forms

If orders are being sought relating to dementia as set forth in Probate Code section 2356.5, namely, restricted placement and/or dementia medications (i.e. psychotropic medications given solely for dementia), the following forms must be filed confidentially with the petition:

1) "Attachment Requesting Special Orders Regarding Dementia" (GC-313);

2) "Capacity Declaration-Conservatorship" (GC-335); and

3) Dementia Attachment to Capacity Declaration - Conservatorship (GC-335A)

The Capacity Declaration must reflect an examination date of the proposed conservatee within 120 days from the date of filing, unless good cause is shown. Good cause may be established through a declaration. The Petition Worksheet (item 3 above) shall be marked confidential by the Court at the time of filing and shall be kept in the Court's confidential file.

B. Requests for Dementia Powers at Subsequent Hearing:

1) If Exclusive Medical Authority Has Not Previously Been Ordered. If exclusive medical authority has not previously been ordered, the conservator must first establish that the conservatee lacks the capacity to give consent for medical treatment before the Court will grant dementia powers. The conservator should use GC-380 and provide the same documents as set forth above.

2) If Court Has Already Granted Exclusive Medical Authority. If the Court has already made an order granting exclusive authority to give consent to medical treatment, the conservator shall petition to modify that order to add the dementia powers. The conservator should use GC-380 and inter-lineate that the petition is for modification of an existing order. The Attachment Requesting Special Orders Regarding Dementia (GC-313), an updated Capacity Declaration, and the Probate Conservatorship for Dementia-Petition Worksheet (local form) shall accompany the petition. (See confidentiality requirements, above.)

C. Stale Dated Capacity Declaration:

In all cases, the Capacity Declaration must reflect an examination date of the proposed conservatee within 120 days of the filing date of the petition, unless good cause is shown. Good cause may be established through a declaration.

D. Psychotropic Medications to Treat Conditions Other Than Dementia—No Capacity to Give Consent:

If a conservatee is prescribed psychotropic medications for the treatment of another medical condition (i.e. other than dementia), and if the conservatee lacks the capacity to give consent for medical treatment, the conservator shall file a doctor's declaration explaining that the medications are not for the treatment of dementia.

E. Dual Diagnosis:

In all cases where there the treatment is for a dual purpose, the conservator must comply with Probate Code Section 2356.5.

(Adopted, effective July 1,2004 [former Rule 4.81(b)]) (Amended, effective January 1, 2008)

4.81.11 VISITS TO THE CONSERVATEE

A conservator of the person shall visit the conservatee on a periodic basis, but no less often than once a month. The Public Guardian is exempted from this Rule and shall report annually to the Court on its policy and practice.

(Adopted, effective July 1, 2004)

4.81.12 MEDICAL CONSENT AUTHORITY

All conservators of the person have the power to consent to medical treatment of the conservatee so long as the conservatee does not object. In emergencies, the conservator may give consent for medical treatment. Reference: Probate Code section 2354.

(Adopted, effective July 1, 2004 [former Rule 4.81(e)])

4.81.13 EXCLUSIVE AUTHORITY TO GIVE MEDICAL CONSENT

A. If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment pursuant to Probate Code §2355, the conservator may be granted the exclusive authority to give such consent and may give such consent over the objection of the conservatee. Exclusive authority to give consent for medical treatment can be requested at the time of the initial petition for conservatorship (GC-310) or at a later time by a separate petition (GC-380). Clear and convincing evidence must be shown that the conservatee lacks the capacity to give informed consent to any medical treatment. General mental confusion, disorientation, etc. will not alone support an order for exclusive medical authority. Such authority will be granted if the court finds that the conservatee lacks the capacity to give consent, and only if the following conditions are satisfied:

1. Court Investigator Report: It clearly appears from the court file that a Court Investigator has advised the conservatee of the effect of granting such authority and of the conservatee's rights in regard to such request.

2. Physician's Decision: A physician's declaration is filed stating a medical opinion that the proposed conservatee lacks the capacity to give informed consent to any medical treatment and that the proposed conservator should be granted the exclusive authority to give such consent and to consent over the objection of the proposed conservatee. Such declaration must state the factual basis for the opinion and the nature and extent of the physician's examination and investigation.

B. Conservatee Regains Capacity: If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code Section 1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

(Adopted, effective July 1, 2004)

4.81.14 INVENTORY AND APPRAISEMENT

Reference: Probate Code, section 2610.

(Adopted, effective July 1, 2004)

4.81.15 INDEPENDENT POWERS—SALE OF REAL PROPERTY AND OF CONSERVATEE'S RESIDENCE

A. The court may, on the petition of the conservator either at the time of appointment or later, grant additional powers to the

conservator as authorized by the Probate Code sections 2590 and 2591. All requests for independent powers must allege sufficient facts to establish good cause, and must be tailored to the specific circumstances of each case.

B. Sale of Real Property. The Court will grant a power to sell real property under Probate Code section 2591 only where the power is made subject to court confirmation of any sale made by the conservator or by a specific order of court upon a showing of good cause.

C. Sale of Conservatee's Residence. If a conservatee's residence is being sold without the power to sell pursuant to Probate Code section 2591, the petition must comply with the requirements of Probate Code section 2540(b).

(Adopted, effective July 1, 2004 [formerly Local Rules 4.81 (j) and (k)]) (Amended, eff July 1, 2008)

4.81.16 WAIVERS OF ACCOUNT

Waivers of Account will be accepted in the Court's discretion only in the following instances:

A. The conservatee's estate falls within the requirements of Probate Code section 2628. A written request along with an affidavit, stating that the estate does qualify for the waiver, must be submitted for every accounting period in which a waiver is sought. A Local Court form is available for this purpose.

B. When the proceeding is terminated by court order, and the conservatee thereafter waives an account.

C. When the proceeding is terminated by death of the conservatee and (a) there is no will and a written waiver is obtained from all of the conservatee's heirs, or (b) there is a will and a written waiver is obtained from the executor or administrator and the beneficiaries under the will after the order admitting the will has become final. Waivers will be accepted only from heirs or beneficiaries who are competent adults.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(h)(2)]) (Amended, effective July 1,2006)

4.81.17 Accounts and Reports

B. Accounting records that need to be provided to the court are set forth in Probate Code sections 2620, and 1061-1063. Schedules for Income and Disbursements shall be stated in chronological and also categorical format.

C. California Licensed Professional Fiduciaries or licensed guardians or conservators who are required to file original account statements with the court under Prob C §2620(c)(3) shall "Lodge" those records with the court rather than filing them as permitted under this code section. These records will be returned to the submitting party when the court determines the guardian's or conservator's accounting is final.

D. Any person who is submitting records as required pursuant to Prob C §2620 shall file an affidavit captioned "CONFIDENTIAL FINANCIAL STATEMENT" that describes the character of the documents attached to it as described in Prob C §2620(c)(7) [confidential or personal information contained in the accounting records]. The submitting party must comply with the provisions of §2620(c)(7).

D. Individuals who "Lodge" their records under this Rule shall:

(1) Review and comply with the Procedures for Lodging Confidential Financial Statements that can be found on the Court's Website in the Probate section under the "General Information" tab Local Court Form PR-26 (Instructions for Lodging Original Financial Statements) or from the Probate Investigator's Office.

(2) Deliver the records to be lodged to the Court's Probate Investigator's Office in Redwood City, California.

(3) All statements must be placed in a 9x12 or 10x13 manila envelop. If one envelope is insufficient to hold all of the statements, additional envelopes shall be used and numbered in sequence (i.e. 2 of 4). However if ten or more packets are being submitted, the records shall stored in a cardboard storage box.

(4) Pick up the lodged documents from the court within (5) five court days after the "Order Approving Account"

E. The Public Guardian is exempt from stating their Schedule for Income and Disbursements in chronological format by account and in a categorical format as required in paragraph "A" above.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(h)(1)])(Amended, effective January 1, 2008) (Amended, effective July 1, 2009)

4.81.18 Confidential Status Report

A. Unless waived by the Court, every conservator shall file a Confidential Status Report at the time of the court review, excluding the six (6)-month review, or upon the filing of an accounting. A local form "Confidential Status Report (PR-19)" may be submitted or, the conservator may submit a more detailed pleading as appropriate under the circumstances but it must include all the information required in Local Court Form PR-19. The report shall include conservatee's:

1. Name/address/telephone/type of residence;

2. Diagnosis;

3. Living arrangements & functional level (describe what assistance is provided); length of stay at residence; describe the facility, what services it offers and the medical monitoring; intent to continue placement or make a change; any hospitalizations;

4. State current value, average monthly income, average monthly expenses, explaining any unusual receipts, expenses or "internal accounting adjustments" not otherwise delineated in the account, and the amount of the bond required to cover all assets, less real property, and estimated income for one year. State if there is a trust/special needs trust, name of trustee, and fair market value of the trust. Provide income information for conservatees receiving public benefits and name of Representative Payee.

5. Current issues - conservator's personal observations and compliance with court orders;

6. Description of all sales, purchases, changes in form of assets, explanation of unusual items, statement of all compensation paid from assets subject to the account, family affiliation, cash invested; and

7. Dates of visits to conservatee.

B. The Public Guardian is exempt from the use of the "Confidential Status Report" form that is required in paragraph "A" above.

(Adopted, effective July 1, 2004 [formerly Local Rules 4.81(h) and (i)]) (Amended, effective July 1, 2006) (Amended, effective July 1, 2009)

4.81.19 DISCLOSURE OF FEES FOR PRIVATE PROFESSIONAL CONSERVATORS

At the time a private professional conservator is nominated to serve as conservator, the petitioner must attach the professional conservator's hourly rate to the petition for appointment of conservator.

(Adopted, effective July 1, 2004) (Amended, effective July 1, 2009)

4.81.20 DEATH OF CONSERVATEE

Upon the death of a conservatee:

(a) The conservator shall file a Notice of Death of Conservatee with a certified copy of the death certificate attached within 60 days.

(b) For conservator of the person only, no further request for discharge is required. Probate Code section 1860.

(c) For conservator of the estate, a final account shall be filed and approved before the conservator will be discharged, unless otherwise waived by the court.

(d) Notice of the hearing on the settlement of the final account be given to the personal representative of the probate estate, if one has been appointed, is named in the conservatee's will, or if none, to any legatee and to the heirs of the conservatee so far as is known to the conservator.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(l)])

4.81.21 TIME FOR ALLOWING COMPENSATION

The time for allowing compensation is governed by Probate Code Sections 2640-2642. Petitions for periodic payment must comply with Probate Code section 2643 and California Rule of Court, Rule 7.755.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003) (Amended, effective July 1, 2004 [formerly Rule 4.86]).

4.81.22 OBTAINING FINAL DISCHARGE

Discharge of the conservator will not be made in the order settling final account. A separate declaration for final discharge must be submitted, together with the receipts executed by all persons receiving conservatee's property thereunder and a copy of the order settling the final account and ordering delivery of the assets.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(m)])

4.82 Substituted Judgment

Prior Court approval is required for any action specified in Probate Code Section 2580, et seq. such as the making of a gift or gifts or the establishment of a trust or trusts.

A. Petition: A clear factual showing as required by Probate Code Section 2583 shall be included in each petition submitted.

B. Notice: Notice shall be given under Probate Code Section 2581 except in those cases in which there has been a prior Court order dispensing with notice to some person or persons.

C. Appointment of Independent Counsel: Prior to the hearing on any petition for substituted judgment pursuant to Probate Code Section 2500 et seq., unless waived by the court, independent counsel for the conservatee shall be appointed by the court through the Court Investigator's Office. Independent Counsel shall report to the Court regarding the efficacy and propriety of the proposed action.

D. Bond and Accountings: A trust created pursuant to this rule shall include the following, unless exempted by order of the court for good cause show:

(1) During the period of the conservatorship, any trust created pursuant to this section shall state that the trustee and the trust shall be subject to court supervision. The continuing jurisdiction of the court shall be reflected in the order for substituted judgment.

(2) Accountings shall be subject to court approval and are required to be filed concurrently with conservatorship reviews and,

(3) A reasonable bond shall be required of the trustee, unless otherwise waived by the court. :

(4) No fees shall be paid to the trustee or attorneys without prior court approval.

(5) Upon termination of the conservatorship, the trust may be released from court supervision upon order of the court.

E. Confidential Filings: Petitioner may requests that estate planning documents be filed as confidential documents. The request may be made on an ex parte basis.

F. Filing Procedures: All filings must consist of an original and two(2) copes. Signatures must be in blue ink. The clerk will retain the original and one(1) copy of all documents. (The clerk will deliver the copy to the Court Investigators). The second copy will be "endorsed filed" and will be returned to the filing party for his/her records.

G. See Local Rules of Court, Rule 4.94

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000; effective July 1, 2004) (Amended, effective July 1, 2009)

CHAPTER 13
COMMISSIONS AND FEES

4.83 STATUTORY COMPENSATION IN DECEDENT'S ESTATES

A. Calculation must be shown: All petitions requesting payment of statutory compensation—even if accompanied by a waiver of accounting—must show the calculation of the compensation requested.

B. Basis for computing statutory commission and fees on Waiver of Accounting: As an alternative to basing statutory commissions and fees on the inventory values alone, where the petition for final distribution so requests, the Court will allow such commissions and fees to be based on the inventory values plus income, plus gains on sales, less losses on sales, provided these figures are set forth clearly and succinctly in the verified petition.

(Adopted, effective July 1, 1996)

4.84 COMPENSATION FOR EXTRAORDINARY SERVICES IN DECEDENTS' ESTATES

A. The following factors will guide the attorney and the court in determining whether and in what amount extraordinary attorneys' fees will be awarded:

(1) The nature of and unusual time required for the tasks performed.

(2) Results obtained.

(3) Benefits accruing to the estate and to beneficiaries.

(4) Nature of services performed by personal representatives.

B. Requests for extraordinary attorneys' fees must contain detailed and *itemized* descriptions of the work performed, the hours spent on the work performed, the average hourly rate requested, the total amount requested, special circumstances related to the request **and specifics as to what benefit was conferred upon the estate as a result of the extraordinary services rendered.**

C. Extraordinary fees may be awarded for extraordinary services, including but not limited to the following:

(1) Sales, leases, exchanges, financing or foreclosure of real or personal property.

(2) Contested or litigated claims against the estate.

(3) Preparation of income, sales, withholding, gift or estate tax returns and handling of audits or litigation connected with tax liabilities.

(4) Litigation connected with estate assets.

(5) Carrying on the decedents' business.

(6) Will contest.

(Adopted, effective July 1, 1996)

4.85 COMPENSATION FOR CONSERVATORS AND THEIR ATTORNEYS

A Conservator or Attorney assigned on a case to perform any services associated with the administration of the estate shall be compensated for services rendered as set forth below and subject to the following criteria:

A. Fees for Conservators and Attorneys. Conservators and their attorney's fees may be requested at the time of the accounting, and shall be calculated according to the work actually performed. Fee requests must be supported by a declaration of services performed, time expended, average hourly rate, results accomplished and benefit to the entity. California Rules Of Court, Rules *7.751*, *7.752*, *7.753*, and *7.754*.

B. Fees for Public Guardian and County Counsel.

(1) Public Guardian Fees: Fees per accounting period for Public Guardian shall be based on the following:

(a) Percentile: 1.5% (.015) of fair market value of the estate on hand or $1500, whichever is greater. Fees may be increased or decreased at the discretion of the court.

(b) For cases requiring extraordinary services, the Public Guardian Conservator may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

(2) County Counsel Fees: Fees per accounting period for County Counsel shall be based on the following:

(a) Percentile: 1.5% (.015) of fair market value of the estate on hand or $1500, whichever is greater. Fees may be increased or decreased at the discretion of the court.

(b) For cases requiring extraordinary legal services, County Counsel may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

C. The fees set out in paragraphs 1 and 2 (a) and (b) above are guidelines only and may be increased or decreased at the

discretion of the Court.

D. Additional Fees:

(1) Public Guardian Case Initiation Fee of $250.00 payable upon permanent assignment of case to a Public Guardian.

(2) A $1,000.00 fee, per property sold, is assessed by the Public Guardian for facilitating in the sale of real property.

(3) A fee equal to $75.00 per hour or 25% of the value of the financial instrument involved, whichever is less, will be assessed for each financial instrument sold or registered.

(4) A fee of $75.00 per hour will be assessed for assisting in the initial placement of a Dementia Conservatee client.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003; effective July 1, 2004, effective 7/1/2008)

4.86 TIME FOR ALLOWING COMPENSATION

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003) (**RENUMBERED,** effective July 1, 2004, see new Rule 4.81.21)

4.87 PROCEDURE

(Adopted, effective July 1, 1996) (**REPEALED,** effective July 1, 2004)

4.88 COURT INVESTIGATION ASSESSMENTS

A. Unless deferred or waived by the Court, all guardianships and conservatorships shall be assessed a fee pursuant to Probate Code §§1513.1 and 1851.5 as stated in the Court's Fee Schedule that is available in the Court Clerk's Office public counter or on the Court's website at www.sanmateocourt.org.

B. Conservatorships and guardianships will be assessed a fee of $500.00 for all conservatorship investigations performed by the Aging and Adult Services (AAS), whether or not the case is ultimately assigned to the Public Guardian, unless the fee is deferred or waived by the Court.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003; effective July 1, 2004)

APPENDIX A TO CHAPTER 13
RULES FOR DETERMINING COMMISSIONS ON
SALE OF REAL PROPERTY

CHART OF BROKERS' COMMISSIONS

(Real Property Sales—Probate Code Section 10162-10165)

ABBREVIATIONS

B#1 = the broker with an exclusive listing agreement with personal representative

B#2 = the broker who represents the original bidder whose bid is returned to Court

B#3 = the broker who represents the successful overbidder in Court

OB = the original bidder whose bid is returned to Court

SOB = the successful overbidder in Court (no editorial comment intended by the abbreviation)

NO EXCLUSIVE LISTING AGREEMENT
(i.e., there is no B#1)

A. OB is represented by B#2

OB gets the property

therefore,

Entire commission goes to B#2, based on the *confirmed* amount (Section 10162.3)

B. OB has no broker

SOB is represented by B#3

SOB gets the property

therefore,

B#3 gets the entire commission, based on the *confirmed* amount (but subject to the Section 10162 limitation that the commission cannot exceed 50% of the difference between the original bid and the successful bid) [Section 10163]

C. OB is represented by B#2

SOB has no broker

SOB gets the property

therefore,

B#2 gets the entire commission, based on the *original* bid, [Section 10164(a) & (b)]

THERE IS AN EXCLUSIVE LISTING AGREEMENT (WITH B#1)

D. OB is represented by B#2

SOB has no broker

SOB gets the property

therefore,

B#1 and B#2 *split* the entire commission based on the *original* bid as follows:

a. Pursuant to agreement, if there is one; or

b. 50-50, if there is no agreement. Section 10164(c)

E. OB is represented by B#1 (*i.e.*, B#1 is B#2)

SOB is represented by B#3

SOB gets the property

therefore,

B#3 gets: 50% of commission based on *original* bid,

plus 100% of commission on *difference* between original and successful bids

B#1 gets: 50% of commission based on *original* bid Section 10165(c)(1)

F. OB is represented by B#2 (B#1 is not B#2)

SOB is represented by B#3

SOB gets the property

therefore,

B#3 gets: 50% of commission based on *original* bid,

plus 100% of commission on *difference* between original and successful bids

B#1 and B#2 *split* 50% of commission based on *original* bid as follows:

a. Pursuant to agreement, if there is one; or

b. 50-50, if there is no agreement (Section 10165)

(Effective July 1, 1996)

CHAPTER 14
TRANSACTIONS INVOLVING INCOMPETENT SPOUSE

4.89 Prior Court Approval Is Required For Any Action Specified In Probate Code Section 3100, Et Seq.

A. Petition: A clear factual showing of the information set forth in Sections 3121, 3122 and 3123 shall be included in each petition submitted.

B. Notice: Notice shall be given as required by Sections 3130 and 3131.

C. Appointment of Independent Counsel: Prior to the hearing on any petition for Court approval of a transaction involving an incompetent spouse, pursuant to Probate Code section 3100 et seq. independent counsel for the conservatee shall be appointed by the Court pursuant to Local Court Rule, Rule 4.100. Appointment of independent counsel shall be initiated by the petitioner(s) and shall be arranged through the Court Investigations Office of the Probate Division. Independent Counsel shall report to the court regarding the efficacy and propriety of the proposed transaction.

D. Bond: Upon the granting of a petition approving a transaction involving an incompetent spouse, reasonable bond shall be required of the petitioner pursuant to Section 3150.

E. Filing Procedures: All filings must consist of an original and two(2) copes. Signatures must be in blue ink. The clerk will retain the original and one(1) copy of all documents. (The clerk will deliver the copy to the Court Investigators). The second copy will be "endorsed filed" and will be returned to the filing party for his/her records.

(Adopted, effective January 1, 2000) (Amended, Effective July 1, 2004) (Amended, effective July 1, 2009)

CHAPTER 15
TRUSTS

4.90 TRUSTEE'S ACCOUNTS

A. General. Accounts for intervivos trusts must be filed as a new proceeding even if the trust receives distribution from a decedent's estate following probate of a pour-over will.

B. Contents and Format. Refer to Local Rule 4.48 above.

(Adopted, effective July 1, 2004)

4.91 NOTICE TO BENEFICIARIES

Notices shall be provided as set forth in Probate Code sections 15802 and 15804 and California Rules of Court, Rules 7.50 through 7.55 and 7.902).

(Adopted, effective July 1, 2004)

4.92 COMPENSATION OF TRUSTEES AND ATTORNEYS FOR TRUSTEES

A. Criteria. In determining or approving compensation of a trustee and the attorney for the trustee, the court may consider the following additional factors in addition to the factors specified in California Rules of Court, Rule 7.756:

1. Whether the trustee has delegated work to others (such as investment advisors, property managers, attorneys, etc.)

2. If the trustee is a corporate trustee, the published rates for its usual services; and if the trustee is a private professional fiduciary, the usual hourly rates charged by such fiduciary.

3. Whether the trust assets being administered are passive or require active management.

4. Whether the duties of the trustee in administering the trust are similar to those of a personal representative of a probate estate.

B. The time for allowing compensation is governed by Probate Code Sections 15680-15688. Petitions for periodic payment must comply with Probate Code section 2643 and California Rules of Court, Rule 7.756.

(Adopted, effective July 1, 2004)

4.93 TRUSTS ESTABLISHED BEFORE DISTRIBUTION OF PROBATE ESTATE

A. If a trustee named in a decedent's will is designated as beneficiary of a life insurance policy, or of employment or other benefits, the trustee may be appointed before the decree of distribution is made, upon the filing of a petition. If no trustee named in the will is able or willing to serve, a trustee not named in the will may be appointed. Notice shall be given to the beneficiaries and the personal representative, if not the petitioner, at least 30 days prior to the hearing.

B. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust estate set forth in the order. All other terms of the trust not required can be incorporated by attaching a copy of the trust to the order. Reference California Rules of Court, Rule 7.650.

(Adopted, effective July 1, 2004)

4.94 TRUSTS CREATED PURSUANT TO COURT ORDER

A. Any trust that is created by court order (including trusts created under the "substituted judgment" provisions of Probate Code section 2580 et. seq. and trusts created under the provisions of Probate Code section 3100 et seq. relating to particular transactions for disabled spouses, and Section 3600 et seq. relating to the compromise of claims of minors and incompetent adults), shall, unless otherwise ordered by the court upon good cause shown, contain provisions providing for protection of the trust assets against misuse and for continuing supervision by the Court.

B. A special needs trust created by order of the court for the benefit of an incompetent person will ordinarily be required to contain the following provisions:

1. Provisions for appointment of a successor trustee on approval of the court.

2. Requirement that all trustees except corporate trustees post a bond in the amount required by Probate Code Section 2320.

3. Requirement of an accounting to the beneficiary, and to the Probate Court if required by the Court, consistent with Probate Code Sections 1060 et seq.

4. A payback provision, if applicable, must be inserted as required by 42 USC 1396(d)(4)(a) for repaying of benefits paid by Medi-Cal or any other Medicaid agency.

5. Notice requirements on termination of the trust or death of beneficiary, and for any additions to the trust.

6. Dispositive provisions for distribution to residual beneficiaries after any payback required by 42 USC 1396 (d) (4)(2) has been made.

A court order creating a special needs trust under Section 3602 or 3611 shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services and any county or city and county in this state shall first be satisfied prior to transferring funds to the special needs trust.

C. A trust created for a conservatee under Probate Code Section 2580 will ordinarily be required to include the following provisions:

1. Provisions for appointment of a successor trustee on approval of the court.

2. Requirement that all trustees except corporate trustees post a bond in the amount required by Probate Code Section 2320.

3. Requirement that the trustee shall file reports and accounts to be reviewed in conjunction with the review of the conservatorship.

4. Prior court approval shall be required for his or her acts, where such approval would be required if the Trustee were administering the estate as a conservator.

Refer to Local Rules of Court, Rule 4.82 above.

(Adopted, effective July 1, 2004)

4.95 FEES FOR PUBLIC GUARDIAN AND COUNTY COUNSEL

A. Public Guardian Fees: Fees per accounting period for Public Guardian shall be based on the following:

1. Percentile: 1.5% (.015) of fair market value of the estate on hand or $1500, whichever is greater.

2. For cases requiring extraordinary services, the Public Guardian Conservator may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

B. County Counsel Fees: Fees per accounting period for County Counsel shall be based on the following:

1. Percentile: 1.5% (.015) of fair market value of the estate on hand or $1500, whichever is greater.

2. For cases requiring extraordinary legal services, County Counsel may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

C. The fees set out in paragraphs A and B above are guidelines only and may be increased or decreased at the discretion of the Court.

D. Additional Fees:

1. Public Guardian Case Initiation Fee of $250.00 payable upon permanent assignment of case to a Public Guardian.

2. A $1000.00 fee, per property sold, is assessed by the Public Guardian for facilitating in the sale of real property.

3. A fee equal to $75.00 per hour or 25% of the value of the financial instrument involved, whichever is less, will be assessed for each financial instrument sold or registered.

4. A fee of $75.00 per hour will be assessed for assisting in the initial placement of a Dementia Conservatee client.

(Adopted, effective July 1, 2004)

4.96-4.99 RESERVED

4.100 INDEPENDENT COUNSEL

A. Appointment. Independent Counsel will be appointed by the Court in the matters specified in the Probate Code. In addition, it is the Court's policy to appoint Independent Counsel in the following matters:

1. Petitions under Probate Code Section 3101 (Proceeding to Authorize Transaction Involving Incompetent Spouse);

2. Petitions under Probate Code Section 2580 et seq. (Substituted Judgment);

3. When the probate investigations department has recommended the appointment of Independent Counsel, or the Court otherwise determines that appointment is necessary or would be helpful for resolution of the matter at issue.

B. Scope of the representation shall be as set forth in the order appointing Independent Counsel or as subsequently modified by the Court.

C. Payment of Fees. If Independent Counsel is appointed, the fees incurred must be paid as ordered by the Court, even if the matter for which the appointment was made is dismissed, withdrawn or terminated.

D. Term of Service. Independent Counsel shall serve until discharged by order of the Court. Independent Counsel may request fees and discharge at the time of filing the Report of Independent Counsel (where representation will not be ongoing), in a separate petition after conclusion of the matter for which representation was required, or (in ongoing matters) from time to time as deemed reasonable by the Court, although in such cases the Court prefers to hear the petition for fees at the time of an accounting.

E. Court Policies and Procedures. Additional matters concerning the panel of Independent Counsel, including panel membership, appointment to the panel, and the rotation of appointments, are set forth in a separate set of Court Policies and

Procedures developed and maintained by the Court.

F. Reports by the Independent Counsel to the Court must be filed with the Court at least five(5) court days prior to the hearing.

(Adopted, effective July 1, 2004)

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Santa Barbara County
Probate Rules

Effective July 1, 2009

CHAPTER SEVENTEEN
PROBATE RUES

1700 PROBATE CASE CALENDARING

1701 CALENDAR POLICY

1702 EXECUTORS & ADMINISTRATORS

1703 BOND OF PERSONAL REPRESENTATIVE

1704 INVENTORY & APPRAISAL

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1700 PROBATE CASE CALENDARING

(Rule 1700 Repealed effective 07-01-09; adopted 07-01-98; previously amended 01-01-99)

1701 CALENDAR POLICY

(a) [Venue] All probate cases shall be assigned/scheduled to a region based upon the residence address of the decedent and pursuant to rule 203.

(b) [Tentative Rulings] Uncontested probate may be submitted on verified petitions and accounts pursuant to Probate Code section 1022. The judge assigned to the probate calendar will review all documents prior to the hearing date and will tentatively approve those cases that are in proper form and to which no objections have been filed. Those cases that are not in proper form or those in which the court can reasonably expect objections to be filed or in which the court has objections or concerns will not obtain tentative approval and an appearance at a hearing will be required. A list of all cases to be called on the probate, conservatorship and guardianship calendars will be posted on the Court's Internet web site www.sbcourts.org and by 3 p.m. of the day preceding the hearing with a notation whether tentative approval will be issued.

(c) [Objections to Pre-Approved Matters] At the time scheduled for hearing, all cases on the calendar will be called. If an objection is made when a case is called, the court will schedule a hearing on a future date to allow for the filing of written objections. If no objections are made when a case is called, or if written objections are not on file at the time of any new hearing

date, the tentative ruling will be deemed the final order.

(d) [Proposed Probate Orders] Proposed orders or judgments shall be submitted on or before noon at least one week prior to the hearing.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-20-05)

1702 EXECUTORS & ADMINISTRATORS

(a) [Petition for Letters] Petition shall be filed on the approved Judicial Council form and shall have attached a legible copy of each document offered for probate as an exhibit. If the original will is attached to the petition, a legible copy is not required. In the case of a holographic will, a typed copy of the document shall be attached in addition to a copy of the handwritten original.

(b) [Notice of Petition] The petitioner or petitioner's attorney shall be responsible for publication of notice where required and where notice by mail is required to be given, petitioner or petitioner's attorney shall give the notice and file a proper proof of service. If no mailing is required, a statement to that effect shall appear on the proof of service.

(c) [Proof of Wills] Ordinarily, oral testimony will not be necessary to prove the will. In any uncontested proceeding, the evidence of one or more subscribing witnesses may be received by declaration or affidavit on the approved Judicial Council form.

(d) [Foreign Wills; Ancillary Probate] A petition to probate a foreign will must have attached a certified copy of the will and a certified copy of the order or decree admitting the will to probate outside this jurisdiction. If the will has been admitted to probate in a foreign country, the copies must be certified in the manner set forth in Evidence Code section 1530 and Probate Code section 361.

(Amended 07-01-09; adopted effective 07-01-98)

1703 BOND OF PERSONAL REPRESENTATIVE

(a) [Duties of Personal Representative] Prior to issuance of letters, individual personal representatives shall read and file with the Clerk the Duties of Personal Representative form. Individual personal representatives shall not complete the Duties of Personal Representative form with their Social Security Number or Driver's License Numbers; these lines on this form shall be left blank. Corporate personal representatives are not required to file this form.

(b) [When Required] Bond shall be required in all cases unless waived by the will. Waiver of bond by heir and/or beneficiaries pursuant to Probate Code sections 8480 and 848 1(a)(2) will be considered by the court and permitted on a case-by-case basis. If required, the bond must be approved by the judge after it is filed and before letters are issued.

(c) [Bond Waiver for Sole Heir or Beneficiary] If requested in the petition, bond will be waived when the personal representative is the sole heir or beneficiary.

(d) [Amount of Bond] If required, upon filing the Inventory and Appraisement, the personal representative or the attorney for the estate shall apply to the court for an increase or reduction in the amount of the bond.

(e) [Letters of Personal Representative] The personal representative shall take the prescribed oath of office and sign, date and file the letters anytime preceding or during the estate proceeding.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1704 INVENTORY & APPRAISAL

(a) [Deadline for Filing] Probate Code section 8800 requires the Inventory and Appraisal be filed within four (4) months after the appointment or within such further time as the court may allow after a showing of good cause. If the personal representative neglects or refuses to file the Inventory within the time prescribed, the court, upon notice, may revoke the personal representative's letters.

(b) [Preparation of Inventory] The Inventory and Appraisal shall conform to the requirements of Probate Code sections 8850 and 8900. Each Inventory item shall be clearly and concisely described in the manner set forth in the current version of the Probate Referee's Procedure Guide published by the California Probate Referee's Association. In the case of real property, the full legal description, street address, and Assessor's parcel number shall be included.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1705 CREDITOR'S CLAIM

(a) [Forms] Claims shall be submitted on the form approved by the Judicial Council.

(b) [Claims Filed with the Court] The personal representative shall allow or reject the claim by endorsement on the original or by filing a separate allowance or rejection of the claim.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-03)

1706 SALES OF REAL OR PERSONAL PROPERTY

(a) [Forms] Petitions to Confirm Sales of Real Property shall be on the Judicial Council approved forms. Care must be taken to complete all applicable forms. Failure to do so may require continuance or re-notice of the petition.

(b) [Brokers Commissions on Real Property Sales] The court will not approve a real estate commission in excess of 6% except in unusual cases where a larger commission is justified because of exceptional circumstances.

(c) [Real Property Descriptions] A Petition to Confirm Sale of Real Property shall, in addition to the legal description, contain the street address or other familiar designation of property, and the County Assessor 's parcel number for the property.

(d) [Appearance by Attorney for Sales Confirmation] In hearing petitions for confirmation of sale of real property and for sale of personal property where bidding is authorized, the court ordinarily will not proceed with confirmation of the sale in the absence of the attorney of record.

(e) [Sale of Personal Property; Appraisal] Sales of personal property will not be approved or confirmed by the court unless the property has been appraised. When necessary, a partial inventory and appraisal may be filed for this purpose.

(f) [Additional Bond at Sale] The Petition to Confirm Sale must set forth the amount of additional bond required as a result of the sale, or if the bond is waived or if no additional bond is required, must contain a statement to that effect.

(g) [Approval of Overbid on Credit Sales] If the sale returned for confirmation is upon credit, a higher bid pursuant to Probate Code section 10262, whether on the same or additional credit terms, shall not be approved unless the personal representative or the personal representative's attorney informs the court that the overbid is acceptable.

(Amended 07-01-09; adopted effective 07-01-98)

1707 ACCOUNTS OF EXECUTORS & ADMINISTRATORS

(a) [Waiver of Account] The court will approve a final distribution without an account only when there has been strict compliance with Probate Code section 10954.

(Amended 07-01-09; adopted effective 07-01-98; previously amended 07-01-00)

1708 FEES OF EXECUTORS & ADMINISTRATORS

(a) [Basis for Computation] Whether or not the accounting is waived, the Petition for Distribution shall state the amount of the statutory commissions requested to be paid to the personal representative and to the attorney. The petition shall set forth the basis and the computation of the statutory fees.

(b) [Allowance on Account of Fees] Allowances on account of statutory fees will be granted only in accordance with the actual work completed. In any event, the last 25% of the statutory fees will not ordinarily be allowed before the approval of the final account and decree of distribution.

(c) [Extraordinary Fees] Any application for fees for extraordinary services must set forth with particularity the nature of the extraordinary services rendered. In cases where the statutory fees are substantial, the court will consider the statutory fees in determining whether extraordinary fees are appropriate. Fees will not be allowed for services rendered with respect to non-probate assets such as life estates, joint tenancy, life insurance, etc.

(Amended 07-01-09; adopted effective 07-01-98)

1709 PRELIMINARY & FINAL DISTRIBUTION

(a) [Petition Detail] The Petition for Distribution must list and describe in detail all property to be distributed either in the body of the petition or by a schedule attached to the petition and incorporated by reference. Description by reference to the inventory

is not acceptable.

(b) [Description of Distributees] The Petition for Distribution must set forth in detail the precise manner in which the estate is to be distributed. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient. The petition must set forth the name of the distributee and a statement as to whether the distributee is a minor or adult. If the distributee is a minor, the age and date of birth must also be listed and a guardian, trustee, or parent must be identified.

(c) [Intestacy] Heirs who take by virtue of intestacy must be sufficiently described to permit the court to determine if the laws of intestate succession have been properly applied.

(d) [Character of Community/ Separate Property] The Petitions for Distribution shall contain an allegation as to the separate or community character of the property.

(e) [Judgment of Distribution] Judgments should be drawn so as to set forth the full plan of distribution. Judgments may not contain distribution plans which refer to the petition or any other document.

(f) [Distribution to Minors] If distribution to minors pursuant to Probate Code sections 3401 or 3412 is requested, documents indicating compliance with those sections must be filed before the Judgment of Distribution is signed. In all other cases of distribution to the guardian of the minor, the guardian shall sign the Receipt of Distribution.

(g) [Debts] Each Petition for Final Distribution shall contain an allegation which will enable the court to determine whether the personal representative has complied with the provisions of Probate Code section 11640 concerning payment of the estate debts.

(h) [Non-Resident Beneficiaries] If distribution is to be made to a non-resident beneficiary, the certificate required by Revenue and Taxation Code section 19513 must be filed before Judgment of Distribution will be signed.

(Amended 07-01-09; adopted effective 07-01-98)

1710 CONTESTED MATTERS; ORAL OBJECTIONS

If an oral objection is made at the hearing on any petition, the court shall continue the hearing for a reasonable time to allow the filing of written objections. If the written objections are not filed within forty-eight (48) hours prior to the prescribed hearing date, the hearing will proceed.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1711 MISCELLANEOUS PETITIONS & ORDERS

(a) [Petition for Family Allowance] Ex Parte Petitions for Family Allowance for the benefit of the surviving spouse and/or minor disabled adult children will be accepted for review by the court if presented before the filing of the inventory. Except in unusual cases, the Order for Family Allowance will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six (6) months. An ex parte petition from a person other than the personal representative will not be accepted for review by the court without the written consent of the personal representative.

A Petition for Family Allowance for the benefit of persons other than the surviving spouse and/or minor children will be heard on the regular probate calendar and will be considered only if notice has been given as required by Probate Code section 6541(c).

The petitioner must provide notice and schedule a hearing on a Petition for Family Allowance made more than six (6) months after qualification of the administrator or executor. An Order for Family Allowance must be limited to a specific period of time. The petition of the spouse seeking a family allowance shall contain a description of his or her separate property and a statement of such spouse's income from sources other than the estate. The petition must contain an itemized estimate of monthly expenses. Any petition for the benefit of any other person shall contain similar information.

(b) [Petition for Instructions] A Petition for Instructions is limited to those matters for which no other procedure is provided. It cannot be used in lieu of a Petition to Determine Heirship or a Petition to Determine Title to Property or a Petition for Distribution. The Petition for Instructions should set forth the matter on which the personal representative desires instructions in precise detail. The petition shall be accompanied by a proposed Order of Instructions which sets forth the instructions in clear and explicit language.

(c) [Ex Parte Probate Orders] All requests for ex parte orders must state whether a Request for Special Notice has been filed. If such a Request has been filed, notice must be given to the party requesting special notice or a duly executed waiver of notice must be filed.

(d) [Orders Correcting Clerical Errors] If, through any inadvertence, the minute order or the decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by affidavit, the court will, on its own motion, make a nunc pro tunc order correcting the mistake. The nunc pro tunc order must not take the form of an amended order and should be in substantially the following form: "Upon consideration of the affidavit or declaration of , to correct a clerical error, the (title of order to be corrected), is corrected on the court's own motion by striking the following: '_____ ' and by inserting in lieu thereof '."

The original order shall not be changed by the clerk, but will be used in connection with the nunc pro tunc order correcting it. To prevent further errors, a complete clause or sentence should be stricken even if it is intended to correct only one word or a single figure.

(e) [Order Prescribing or Dispensing With Notice] An order prescribing or dispensing with notice should be submitted to the judicial officer assigned to the probate calendar before the petition is filed. The proposed order should be accompanied by a declaration and points and authorities.

(f) [Spousal Property Petition] A Spousal Property Petition filed with the court must be supplemented with a separate Declaration Regarding Marital History and Property in support of the petition, including: date of the marriage of the deceased and surviving spouse, the court and case number of any legal proceeding regarding the marriage or assets of the deceased and surviving spouses, and, the history of the purchase of each assets itemized on the Spousal Property Petition including source of funds or loans, title to asset, etc. The declaration shall be executed by the surviving spouse under penalty of perjury.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1712 GUARDIANSHIPS

(a) [Contents of Petition] The Petition for Appointment of Guardian shall be on the form prescribed by the Judicial Council and shall comply with the provisions of Probate Code section 1510. A petitions by only one parent for Letters of Guardianship must be personally served on the other parent, together with notice of the hearing, at least fifteen (15) days before the hearing unless the petition is accompanied by a Consent to Appointment and Waiver of Notice signed by the other parent, or the petition sets forth the fact that the other parent is not living. In any action for guardianship of the person, a declaration under the Uniform Child Custody Jurisdictional Act shall be filed with the Petition for Appointment and at any time there is a change of address of the minor.

(b) [Notice] Notice shall be given by counsel for the petitioner to the persons listed and in the manner prescribed by Probate Code sections 1460 and 1511.

(c) [Investigation] An investigation shall be conducted pursuant to the provisions of Probate Code section 1513. The court investigator shall conduct an investigation and report to the court prior to the appointment of a guardian.

(d) [Inventory and Appraisement] The court requires strict compliance with Probate Code section 2610. An Inventory must be filed by the guardian of the estate in all cases. The Inventory should state whether there are any assets on hand. Each inventory item shall be clearly and concisely described. In the case of real property, a full legal description, street address, and Assessor's parcel number must be included.

(e) [Accounts] The account should include a list of all receipts and all disbursements of the guardian. If an item is not self-explanatory, an explanation must appear either in the Account or in the report accompanying the Account. Accounts should conform to the requirements set forth in this rule.

(f) [Frequency of Accounts] The First Account must be filed one year from the date of appointment. Thereafter, accounts must be filed bi-annually unless otherwise ordered by the court. The court will require strict compliance with Probate Code section 2620.

(g) [Reports Accompanying Accounts] The petition and account accompanying the guardian's accounts should contain a statement of the age, health, activity and whereabouts of the ward with an explanation of any unusual items appearing in the account. If the account shows expenditures not authorized by prior court order supporting declarations or testimony will be required before approval of the account.

(h) [Support Obligation of Parents] In all cases where guardianship funds are to be used for the ordinary expenses of supporting a minor, and where there is a parent living who has the obligation to support the minor, the guardian must obtain court approval prior to the expenditure of funds. A Petition for Authority to Expend Funds for Support may be included in the Petition for Appointment of a Guardian, or in any subsequent report of the guardian. Such requests must be accompanied by a detailed explanation (including financial statements, if necessary) of the parent's inability to support the child.

(i) [Allowance of Fees] No Petition for Fees will be considered until the Inventory and Appraisal has been filed. Petition for Fees pursuant to Probate Code section 2640 prior to the filing of the first accounting must include a complete and detailed statement of the services rendered which support the requested fees.

(j) [Bond] A bond will not be required for a petition for appointment of guardian of the person only. Bond will be required of all persons appointed as guardians of the estates of minors unless the guardian can establish that the requirement of bond should be dispensed with pursuant to the provisions of Probate Code sections 2323, 2324 or 2328.

(k) [Investments by Guardian] The court will not routinely grant the additional powers to the guardian pursuant to Probate Code sections 2590 and 2591. If a guardian wishes to invest or expend funds belonging to the ward, the guardian should petition the court for authorization. If expenditures or investments are made by the guardian without prior authorization, such acts will not be considered for approval except on settlement of account. Except in rare and unusual cases, the court will not approve investment in unsecured loans or loans to a near relative unless secured.

(l) [Final Account] A guardian's report will normally not be approved if accompanied by a Waiver of Account unless the ward is present in court and available to testify.

(Amended 07-01-09; adopted effective 07-01-98)

1713 TEMPORARY GUARDIANSHIPS & CONSERVATORSHIPS

(a) The Petition for Appointment of a Temporary Conservator/Guardian may be brought ex parte provided that the notice provisions of Probate Code section 2250(c) are satisfied, either by serving notice or by submission of a declaration showing facts sufficient to allow the court to determine that good cause exists to eliminate or alter the notice requirements, and provided that the following information is submitted:

1. the original and a copy of the petition and proposed order;

2. a detailed statement of facts in the petition establishing the necessity for the temporary guardianship/conservatorship; and,

3. an endorsed filed copy of the petition for appointment of the permanent conservator/guardian. If the attorney is informed that the petition for appointment of a permanent conservator/guardian will be contested, all known potential objectors shall be notified at least twenty-four (24) hours in advance of the time and place the petition for appointment of the temporary conservator/guardian will be presented.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1714 CONSERVATORSHIPS

(a) [Contents of Conservatorship Petitions] The Petition for Appointment of Conservator shall be on the form prescribed by the Judicial Council and shall comply with the provisions of Probate Code section 1821. When filing of the petition, the petitioner shall provide the Clerk an extra copy of each document filed and delivered to the court, including an Order Appointing Court Investigator.

(b) [Notice of Hearing] The petitioner or petitioner's attorney shall be responsible for preparation of the notice of hearing and where notice of hearing and where notice by mail is required to be given, the petitioner or petitioner's attorney shall give notice and file the required proof of service.

(c) [Letters of Conservatorship] Prior to issuance of the Letters of Conservatorship, conservators shall take the prescribed oath of office as conservator and sign, date and file the Letters of Conservatorship anytime during the hearing.

(d) [Duties of Conservator] Prior to issuance of the Letters of conservators shall purchase and read the "Handbook for Conservators" and complete and file with the Clerk the Duties of the Conservator form. Private professional conservators as defined in Probate Code section 2341 are not required to purchase the handbook.

(e) [Conservatorship Inventory and Appraisement] The court requires strict compliance with the provisions of Probate Code section 2610 and the filing of the Inventory and Appraisal within ninety (90) days of the Conservator's appointment. Each inventory item shall be clearly and precisely described. In the case of real property the full legal description, street address and Assessor's parcel number must be included.

(f) [Conservatorship Accounts] Conservatorship accounts must conform to the requirements of the Probate Code for accountings. The hearing on the account shall be set no sooner than forty-five (45) days from the date of filing to allow the court Investigator sufficient time to complete the investigation.

If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall lodge all original account statements showing the balance as of all periods covered by the accounting. Documents lodged pursuant to this local rule will be retained until the court's determination of the guardian's or conservator's account has become final, at which time the documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

(g) [Conservatorship Investigation Costs] In any conservatorship case where a court investigator has been appointed, the court will require evidence of compliance with the provisions of Probate Code section 1851.5 regarding the assessment of the investigation costs before a conservatorship is terminated and the conservator discharged.

(h) [Appointment of Counsel for Conservatee] If the court determines that it is in the best interests of the conservatee or the conservatee requests the appointment of counsel the court shall appoint counsel for the conservatee from the list of attorneys willing to accept such appointments maintained by the Clerk, any other attorney appropriate for such appointment or the Public Defender's Office. Within forty-eight (48) hours of the appointment, the court shall order a "meet and confer" for all counsel involved in the conservatorship proceeding, in person or by telephone.

(Amended 07-01-09; adopted effective 07-01-98, previously amended effective 07-01-00, and 01-01-08)

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Santa Clara County
Probate Rules

Effective January 1, 2010

PROBATE RULES
SANTA CLARA COUNTY SUPERIOR COURT

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ATTACHMENT PB-4015 **Capacity Declaration—Conservatorship of the Estate Attachment**
ATTACHMENT PB-4016 **Lay Person's Declaration Re Legal Capacity**
ATTACHMENT PB-4034 **Petition to Remove Trustee**
ATTACHMENT PB-4035 **Objection to Petition to Remove Conservator**

ATTACHMENT PB-4036	**Objection to Petition to Remove Guardian**
ATTACHMENT PB-4037	**Objection to Petition to Remove Personal Representative**
ATTACHMENT PB-4038	**Objection to Petition to Remove Trustee**
ATTACHMENT PB-4039	**Objection to Petition to Terminate Guardianship**
ATTACHMENT PB-4040	**Petition to Remove Conservator**
ATTACHMENT PB-4041	**Petition to Remove Guardian**
ATTACHMENT PB-4042	**Petition to Remove Personal Representative**
ATTACHMENT PB-4043	**Objection to Guardianship**
ATTACHMENT PB-4045	**Objection**

PROBATE RULES

SANTA CLARA COUNTY SUPERIOR COURT
191 North First Street San Jose, California 95113

Probate Calendar	(408) 882-2100 x2649
Probate Filing	(408) 882-2100 x2654
Probate Examiner	(408) 882-2100 x2668
Court Investigator	(408) 882-2761
Probate Staff Attorney	(408) 882-2100 x2668
Preapproved Matter Recording	(408) 882-2100 x2650

INTRODUCTION

These rules describe rules of practice in probate matters in Santa Clara County not covered by the Probate Code or the other Rules of Court of the Superior Court of Santa Clara County and are subject in any particular case to the discretion of the Court. All parties are directed to the California Rules of Court, Title Seven, Probate Rules.

RULE 1
ADMINISTRATION AND GENERAL POLICIES

A. SCOPE

The Probate Department will hear all matters concerning the Probate Code, or related matters, as well as adoptions, terminations of parental rights, name changes, minor's compromise matters, and mental health matters under the Lanterman Petris Short (LPS) Act.

(Eff. 1/01/10)

B. ALL PURPOSE JUDGE

All matters filed in the Probate Department, including trials, shall be assigned to the Supervising Judge of the Probate Department as the All Purpose Judge (APJ).

(Eff. 1/01/10)

C. CASE ASSIGNMENT

If a case is sent for trial to the Civil Division based upon its expected length or for other reasons, the APJ shall hear all issues up to trial, including any ex parte requests, with the exception of discovery issues. Discovery issues shall be heard in the Civil Discovery Department. However, if a court employee or deputy sheriff working in the Probate Department, or a member of his or her family, is a party to a case, the clerk or Supervising Judge of the Probate Department shall transfer the case to the Civil Division for assignment for all purposes.

(Eff. 1/01/10)

D. VENUE

All probate proceedings in Santa Clara County must be filed in the Probate Department of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113.

E. CONSOLIDATION

Whenever it appears that 2 or more petitions with different case numbers have been filed with reference to the same decedent, conservatee, minor, or trustee, the Court will consolidate all of the matters with the matter bearing the lowest number.

(Eff. 7/01/08)

F. COORDINATION WITH CUSTODY CASES

If there is an action in Family Court regarding the custody of a minor child and an action for Guardianship of the Person or Person and Estate of the minor child in the Probate Court, the cases will be coordinated for hearing purposes and assigned for hearing to the Probate Court.

(Eff. 1/01/10)

G. PROBATE CALENDAR

Probate cases are heard at 9:00 a.m. Monday, Wednesday, Thursday, and Friday, in the Probate Department, except for petitions to appoint guardians and to terminate guardianships prior to the age of majority, which are heard at 9:00 a.m. on Tuesday, and petitions to appoint conservators and to terminate conservatorships prior to the death of the conservatee, which are heard at 1:30 p.m. on Tuesday.

(Eff. 1/01/07)

Parties are required to reserve a hearing date by calling the Probate Calendar Secretary prior to the filing of the petition. In order to file a new matter, a party must obtain a case number and hearing date from the Probate Calendar Secretary.

(Eff. 7/01/02)

H. TELEPHONIC APPEARANCE

(1) Telephonic appearances on the Probate Calendar are governed by California Rule of Court (CRC) 3.670.

(2) Telephonic appearances must be coordinated in advance by counsel or a self-represented party through an independent vendor, currently CourtCall (888-88-COURT).

(3) Telephonic appearances are not permitted for initial conservatorship or guardianship appointments, petitions for temporary restraining orders (including elder abuse cases), or petitions to confirm the sale of real property.

(Eff. 1/01/08)

I. DEADLINE FOR SUBMITTING PROPOSED ORDERS IN UNCONTESTED MATTERS

In all matters where no objections are on file, the petitioning party must submit a proposed order not later than 4 court days in advance of the scheduled hearing date or the matter may be ordered off calendar.

J. OBJECTIONS

Objections to any petition may be made orally at the noticed hearing. Unless the Probate Code requires written objections, the Court may hear the oral objections at the noticed hearing, or the Court may require the objections to be in writing. The Court would prefer that objections be filed at least 2 court days prior to the hearing date. If written objections are required by statute or by the Court, the Court will continue the hearing to allow the objecting party time to file and serve such written objections. The Court may in its discretion set dates for the filing of written objections and responses thereto. Failure to file and serve such written objections before the date set may be grounds for overruling the objections. The following are local forms which may be used to object to the matters indicated:

(1) Objection to Petition to Remove Conservator (attached form PB-4035)

(2) Objection to Petition to Remove Guardian (attached form PB-4036)

(3) Objection to Petition to Remove Personal Representative (attached form PB-4037)

(4) Objection to Petition to Remove Trustee (attached form PB-4038). (Eff. 1/01/08)

(5) Objection to Petition to Terminate Guardianship (attached form PB-4039) (Eff. 1/01/09)

(6) Objection to Guardianship (attached form PB-4043) (Eff. 1/01/09)

(7) Objection (attached form PB-4045) (Eff. 7/01/09)

K. CONTESTED MATTERS

(1) Submission on the Pleadings

At-issue, contested matters that are ready for hearing and that parties will submit on the pleadings without oral argument may be

taken under submission or ruled upon at the scheduled hearing. (Eff. 1/01/09)

(2) Hearing (Eff. 1/01/09)

At-issue, contested matters that are ready for hearing and for which the total hearing time does not exceed one day may be heard in the Probate Department on the date noticed or a continued hearing date. The setting or assignment of all other contested matters including the assignment of cases to the master trial calendar will be made by the Probate Judge. (Eff. 1/01/07)

(3) Trial Briefs

If a party elects to file a trial brief relating to an evidentiary hearing set in a probate matter, the trial brief must be filed and served no later than 7 court days before the scheduled hearing. Any responsive briefs must be filed and served no later than 3 court days before the scheduled hearing. Courtesy copies of any trial briefs and responsive briefs shall be delivered to the courtroom of the judicial officer hearing the matter on the date of filing. Attaching copies of previously filed documents as exhibits to trial briefs is discouraged. (Eff. 1/01/09)

L. APPROVED MATTERS

Approved matters are those that have been reviewed and found satisfactory before the date set for hearing. Personal appearance by parties is not required on approved matters. A list of approved matters is posted at the door of the probate courtroom at the time of the hearing. Interested parties may call (408) 882-2100 x2650, to hear a recording with a list of pre-approved matters for the following day's calendar, or may consult the pre-approved list on the Court's website at www.sccsuperiorcourt.org/probate/. Approved matters for which objections are made at the hearing may be continued. There are no pre-approved matters for the Tuesday guardianship and conservatorship calendars. (Eff. 1/01/09)

All approved probate orders will be signed immediately after the calling of the probate calendar. Parties may pick up their orders at that time.

(Eff. 1/01/09)

M. CONTINUANCES

On the call of the calendar, a matter may be continued for such period as the Court in its sole discretion will determine if a party personally appears on the hearing date and requests a continuance. The Court discourages repeated continuances of a matter. (Eff. 1/01/09)

A continuance may be granted without the need for a court appearance only if all parties agree. The request may be made by a telephone call to the Probate Examiner's Office. The Court may deny any continuance request.

(Eff. 1/01/09)

N. APPOINTMENTS

If in any matter a party believes a conference with the Probate Examiner or the Probate Staff Attorney would be appropriate, an advance appointment should be made with the Probate Examiner's office (408) 882-2100 x2668.

O. WITHDRAWAL OF ATTORNEY OF RECORD

Any attorney wishing to withdraw from a proceeding under the Probate Code as attorney of record whose client will not consent to sign a substitution of attorney may file a motion or petition seeking such relief and must follow the procedures and use the Judicial Council forms specified in CRC 3.1362.

(Eff. 7/01/07)

The Court does not favor the substitution of conservator, executor, administrator, guardian or trustee in propria persona in lieu of attorney of record, unless it is clearly shown that the person acting in propria persona is able to perform the necessary duties and file necessary documents without legal representation.

P. COURT COMMUNICATION REGARDING RESTRAINING ORDERS

(1) Procedure in Probate Court

a. Subject to available resources, the Family, Juvenile, and Probate Courts shall examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Orders. In the event that this information is not available to the judicial officer, inquiry shall be made of the parties before issuing permanent CLETS Civil Restraining Orders.

b. Any order of the Family, Juvenile, or Probate Court that permits contact between a defendant/restrained person subject to either CLETS Civil Restraining Orders or Criminal Protective Orders and his or her children, shall contain specific language setting forth the time, day, place, and manner of the transfer of the children, including the safe exchange of the children, in

accordance with § 3100 of the Family Code. Such an order shall not contain language that conflicts with a Criminal Protective Order. Safety of all parties shall be the Court's paramount concern. The Court or a Court-related agency may recommend safe and specific contact with the children and direct the defendant/restrained person and/or the victim/protected person to the process for modification of protective orders.

(2) Modification of Criminal Protective Orders

a. Any Court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order may modify the Criminal Protective Order if all of the following circumstances are satisfied:

i. Both the defendant/restrained person and the victim/ protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the Court.

ii. The defendant/restrained person is on probation (formal or court) for a domestic violence offense in Santa Clara County or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued. (Eff. 1/01/06)

iii. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is a proposed custody or visitation order which requires recognition in the Criminal Protective Order (Boxes 12 or 13 or both on the Criminal Protective Order form). (Eff. 1/01/07)

iv. The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.

v. Both the victim/protected person and the defendant/ restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to add Box 12 or 13 or both to the Criminal Protective Order. (Eff. 1/01/07)

b. The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check Box 12 or 13 or both shall not be considered less restrictive. (Eff. 1/01/07)

c. The Family, Juvenile, or Probate Court may on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court shall provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties. (Eff. 1/01/07)

Q. PRIVACY REQUIREMENTS FOR DOCUMENTS FILED IN PROBATE MATTERS

(1) Social Security Numbers

If an individual's social security number must be included in a pleading or other court form, only the last 4 digits of the social security number should be used. If the social security number is required by the Court Investigator to complete the investigation, the number shall be supplied only to the Court Investigator, absent a court order.

(2) Financial Account Numbers

If financial account numbers are relevant, only the last 4 digits of such numbers should be used.

(Eff. 1/01/09)

R. COURT INVESTIGATOR REPORTS

Court Investigator Reports are confidential documents and are not to be attached, in whole or in part, to any pleadings or other documents to be filed with the Court, other than by the Court Investigator.

(Eff. 1/01/09)

RULE 2
NOTICES, PETITIONS, DECLARATIONS, AND ORDERS

A. PREPARATION OF NOTICES, PETITIONS, DECLARATIONS, ORDERS, AND PRINTED PROBATE FORMS

Only current Judicial Council forms, local forms authorized by Santa Clara County, or pleadings typed on pleading paper in compliance with the CRC are acceptable for filing. Judicial Council forms are available on the Judicial Council website www.courtinfo.ca.gov.

(Eff. 1/01/09)

B. SIGNATURE BY ATTORNEY (Eff. 1/01/09)

In addition to the requirements of CRC 7.103, an attorney who prepares a petition or other pleading (including those on Judicial Council forms) must sign the document.

(Eff. 1/01/04)

C. NOTICE

Although the Probate Code may require the probate clerk to cause notice of hearing to be given, the practice in Santa Clara County is for the petitioner or attorney to cause notice to be served and file proper proof of service. See also CRC 7.50 through 7.54.

(Eff. 1/01/04)

D. NOTICE TO PERSONS WHOSE ADDRESSES ARE UNKNOWN

Where the address of a person to whom notice is required to be mailed or delivered in a probate proceeding, including guardianships conservatorships, and trusts, is unknown, the court will require an affidavit or declaration stating with specificity the efforts that have been made to locate the person, as described in CRC 7.52.

(Eff. 1/01/04)

E. PETITIONS FOR EX PARTE ORDERS

Unless notice is specifically required by the Probate Code, Court order, or these rules, matters may be presented ex parte.

All ex parte petitions and other ex parte pleadings and supporting documentation must first be presented to the Probate Examiner's office for review.

An ex parte petition or application must contain sufficient facts to justify the orders requested. See also CRC 7.55. (Eff. 1/01/09)

The procedures for submitting ex parte matters to the Probate Court, except in temporary guardianships and conservatorships, are as follows:

(1) The petitioner must first determine if there is anyone who would oppose the matter if he or she knew about it.

(2) If there will be no objection, and the matter is:

- Not urgent: Submit the petition to the Probate Examiner's office.
- Urgent: Contact the Probate Examiner's office for an appointment.

(3) If there will be an objection, and the matter is:

a. Not urgent: Do not submit it ex parte. Instead, have the matter set for a noticed hearing on the regular Probate calendar.

b. Urgent: Contact the Probate Examiner's office to discuss how the matter will be specially set for hearing. In most cases, the petitioner will be referred to the Probate Judge's courtroom clerk for coordinating with the Judge's calendar and the opposition a time when the matter may be heard by the Court.

(4) Notice: A notice and copy of the petition must be served on all parties 24 hours before presenting the ex parte petition to the Court. The petition and a proposed order shall be presented to the Probate Examiner's office with a declaration regarding giving notice. If the matter does not require immediate action, defined to mean action within the day the matter is presented to the Court, the Court will allow 48 hours, not including weekends or holidays, for the opposing party to present the opposition. The Court may dispense with notice for good cause shown.

(5) Temporary guardianships and conservatorships: The above procedures do not apply to temporary guardianships and conservatorships. See sections 11. T. and 12.J. of these Rules.

(Eff. 1/01/09)

F. PROBATE ORDERS

All orders in probate matters must be complete and bear the noticed hearing date and department. All orders of distribution must include complete legal descriptions of any real property being distributed. Any proposed Probate Order submitted to the Court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the Court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order. If a matter is taken off calendar, any orders submitted will be returned to the party and a new order must be submitted for the re-noticed hearing date. For orders in uncontested matters, see Section 1. I.

(Eff. 1/01/10)

G. ORDERS CORRECTING CLERICAL ERRORS

If, through inadvertence, the signed order fails to state the order actually made by the Court, and such inadvertence is brought to the attention of the Court, the Court may make an order correcting the mistake. The party must submit an affidavit or a declaration stating the reason for the amended order. The revised order must take the form of an amended order, setting out the entire order in full as corrected.

(Eff. 1/01/09)

H. LATE FILINGS

All pleadings, documents, and other papers filed within 10 days of the scheduled hearing date must be delivered directly to the Probate Examiner's office for review.

I. FACSIMILE FILING

(1) General Policy

The Probate Department hereby adopts CRC 2.300 et seq., allowing for the facsimile filing of documents in matters covered by the Probate Rules.

(Eff. 01/01/08)

(2) Agency Filing

Pursuant to CRC 2.303, the Court will accept for filing all documents submitted by fax filing agencies except those documents specified in CRC 2.300.

(Eff. 7/01/07)

(3) Direct Filing

a. The Court elects to allow the filing of documents by facsimile transmission through an automated facsimile filing service, which will send facsimiles directly to the court. This version of direct filing does not permit persons to transmit materials from their own facsimile machines to the court for filing. All provisions of CRC 2.304 apply to direct filing by facsimile. Direct filings are made through an independent agency under contract with the Superior Court.

(Eff. 7/01/07)

b. The facsimile machine of the independent agency must be available 24 hours a day, although filings received by the agency after 4:00 p.m. or on court holidays shall be deemed filed on the next court day.

c. Automated fax filing service must be activated by calling (800) 322-4945. Activation will require placing on file a Visa or Mastercard credit card number, expiration date, and fax number of the transmitting fax machine. Confidentiality of the credit card number will be maintained. Those persons registered to use the service will be provided with the automated fax filing telephone number. For questions about fax filing, call Automated Payments Company at (800) 487-4567.

d. In addition to filing and facsimile transmission fees, parties filing new petitions will be charged an additional fee for postage and handling for issuance of citations and notices issued by the court at time of filing.

e. Faxed documents must comply with all filing requirements of the California Rules of Court and the Local Rules of the Probate Department. Compliance with filing requirements and proper transmission of the documents are the responsibility of the sending party and the automated fax filing service.

(Eff. 7/01/07)

RULE 3
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

A. LETTERS OF SPECIAL ADMINISTRATION

Petitions for letters of special administration ordinarily will not be granted on less than 24 hours' notice to the surviving spouse or registered domestic partner, to the nominated personal representative, or to any other person who, in the opinion of the Court, appears to be entitled to notice. In making the appointment, preference is given to the person entitled to letters testamentary or of administration, but if it appears that a bona fide contest exists between these persons, the Court will usually appoint a neutral person or corporation as special administrator. The petitioning party is advised to ascertain whether a bond must be posted prior to the issuance of letters of special administration.

(Eff. 1/01/05)

B. PETITION FOR PROBATE OF WILL OR CODICIL

When a petition for probate of will or codicil is filed, the original of the document being offered for probate must be filed prior to, or concurrently with, the petition. If the will or any part thereof is handwritten, a typewritten copy of the handwritten portion must also accompany the petition.

If the will is in a foreign language, a translation by an expert must be submitted at the time of filing the petition for probate. An affidavit or declaration as to the expertise of the translator must accompany the translation.

C. ALLEGATIONS RE HEIRS, BENEFICIARIES, AND FIDUCIARIES

In a petition for letters testamentary, letters of administration, letters of administration with will annexed, or letters of special administration, all heirs under Probate Code §§ 6402 and 6402.5 known to the petitioner, and all beneficiaries living at the time of the decedent's death, whether vested or contingent, who at the time of the decedent's death might be entitled to share in the distribution of the estate, whether it consists of separate or community property, must be specifically named. If any named beneficiary predeceased the decedent, that fact must be alleged in the petition with the date of death if known. All beneficiaries provided for in the will whose interests have been revoked by a subsequent codicil must also be named.

Where the will devises property to a fiduciary (e.g., trustee, custodian or guardian), the petition, in addition to giving the name and address of the fiduciary, must list the names and addresses of all known beneficiaries of the trust, custodianship, guardianship, etc., who are living or in existence at the date of death of the decedent. Alternate or successor trustees, custodians, or guardians need not be named in the petition. If a post office box is listed as the mailing address for a fiduciary or beneficiary, the street address of the fiduciary or beneficiary must also be shown if available.

D. PUBLICATION

The publication of the Notice of Petition to Administer Estate is sufficient notice of all wills or codicils that are offered for probate and filed with, and specifically referred to in, the petition. Wills or codicils not specifically referred to in the petition must be presented to the Court in an amended or subsequent petition and a new Notice of Petition to Administer Estate must be published.

Where the will has been admitted to probate, no new or additional publication of the Notice of Petition to Administer Estate is required upon the filing of a subsequent petition for letters testamentary or letters of administration with will annexed. See Attachment PB-4000 for information to assist in arranging for publication.

(Eff. 7/01/06)

E. LETTERS

Where the will has been admitted to probate and either there is a vacancy in the office of the personal representative or no letters testamentary have been granted, a new petition for letters testamentary or for letters of administration with will annexed, whichever is applicable, must be filed prior to the issuance of letters.

If the will is denied admission to probate after the filing of a petition for letters testamentary or for letters of administration with will annexed, e.g., in the event of a will contest, letters of administration may be granted on the basis of the petition already on file. No new publication of the Notice of Petition to Administer Estate is required.

F. DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE FORM

The personal representative must not provide his or her social security number or driver's license number on the "Duties and Liabilities of Personal Representative" form (Judicial Council Form DE 147), which is required to be filed in the proceeding.

G. REMOVAL OF PERSONAL REPRESENTATIVE

Individuals requesting removal of a personal representative may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Personal Representative (attached form PB-4042). Anyone objecting to a petition to remove the personal representative may use the local form entitled Objection to Petition to Remove Personal Representative (attached form PB-4037).

(Eff. 1/01/08)

RULE 4
BONDS

A. AMOUNT OF BOND UNDER INDEPENDENT ADMINISTRATION OF ESTATE ACT (IAEA)

If a bond is required of the personal representative, the amount of bond required of a personal representative granted full authority under the IAEA must include the estimated value of the personal property, the estimated net proceeds of the real

property that may be sold under the IAEA, and the estimated value of the annual gross income of all of the property belonging to the estate.

B. NON-RESIDENT PERSONAL REPRESENTATIVE

The Court will ordinarily require a non-resident personal representative to post bond, even if the will waives bond, unless waivers of bond from all heirs or beneficiaries are filed, in which case the Court, in its sole discretion, may not require a bond.

(Eff. 1/01/09)

C. INCREASE OR DECREASE IN AMOUNT OF BOND

When it appears to the Court that the bond of any fiduciary is insufficient, the amount of the bond must be increased at the discretion of the Court. Counsel, personal representatives, guardians, and conservators are referred to CRC Rule 7.204, with regard to their duty to petition to increase the bond. When it appears that the bond of any fiduciary is in excess of the required amount, the fiduciary may petition the Court to reduce the bond. This petition may be presented ex parte. Fiduciaries and counsel should be aware that it is their responsibility to see that the bond amount is sufficient. Conservators and guardians of the estate must seek increases in bond amounts when necessary to meet the requirements of Probate Code § 2320 and CRC 7.207.

(Eff. 1/01/09)

D. REDUCTION OF BOND IN FOLLOWING YEARS BY DEPOSITING ASSETS IN BLOCKED ACCOUNT AND PROVIDING RECEIPTS

At any time, a fiduciary may request a reduction of bond or no bond if monies and/or securities have been deposited into a blocked account in a financial institution or trust company. The order as well as the account must provide that no withdrawals be made without prior authorization by the Court. (Eff. 7/01/08)

A petition to reduce the bond by blocked account deposits may be made ex parte. It is the responsibility of the fiduciary to prepare the Judicial Council form "Order to Deposit Money into Blocked Account" (form number MC 355). This form must be presented to the court for signature at the time the petition to reduce the bond is heard. The fiduciary must also prepare the form "Receipt and Acknowledgement of Order for the Deposit of Money Into Blocked Account" (form number MC 356) and present it (along with a copy of the Order to Deposit Money) to the financial institution accepting the deposit for signature by an officer of that institution. The depository must file the Receipt within 15 days of the date of receipt. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

Where the Court has approved such an order, the order appointing the fiduciary and letters of conservatorship or letters issued in an estate administration matter must state that the fiduciary has no authority to take physical possession of money or other property without specific court order. If a fiduciary or party is using the "Order to Deposit Money Into Blocked Account" form for deposits in other than an interest bearing savings account, the fiduciary or party should adapt the form appropriately.

A petition for withdrawal of funds must be made on Judicial Council form "Petition For Withdrawal of Funds From Blocked Account (form number MC 357), and the petitioner must submit for the Court's signature the Judicial Council form "Order For Withdrawal of Funds From Blocked Account" (form number MC 358).

E. BOND ON BORROWING

A petition to borrow money must contain information sufficient for the Court to determine the proper bond amount.

F. BOND NOT REQUIRED WHERE TRUST COMPANY SERVES AS FIDUCIARY

When a trust company is serving as a guardian or conservator of the estate or as a trustee, bond is not required under Probate Code § 15602.

(Eff. 1/01/09)

G. STATEMENT RE SUFFICIENCY OF BOND IN REPORTS ACCOMPANYING ACCOUNTINGS

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code §2320 and CRC 7.207, and, if not, what steps are being taken to comply with the law and rule.

(Eff. 1/01/10)

RULE 5
THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

A. PETITION FOR AUTHORITY TO ADMINISTER ESTATE PURSUANT TO THE INDEPENDENT ADMINISTRATION OF ESTATES ACT (IAEA)

Full or limited authority to act pursuant to the IAEA may be requested in the petition for letters or by a separate petition.

B. EXTENT OF POWER DEPENDENT ON DATE LETTERS ISSUED

The IAEA has been amended several times. The date letters were last issued establishes the extent of the powers that can be exercised under the IAEA.

C. REPORT OF ACTIONS TAKEN UNDER THE IAEA

In a petition for preliminary distribution or final distribution, all actions taken under the IAEA must be reported as set forth in CRC Rule 7.250. Additionally, petitioner must report the amount paid or received, if applicable.

(Eff. 1/01/04)

D. FILING NOTICE OF PROPOSED ACTION WITH COURT

A copy of any Notice of Proposed Action must be filed with the Court together with the proof of service.

RULE 6
FAMILY ALLOWANCE

A. BY PETITION TO THE COURT

If the petition is filed before the time required for the filing of the Inventory and Appraisal, the Court may order a family allowance for a period commencing with the date of the decedent's death and continuing until the Inventory is filed, but not to exceed 6 months.

If the petition is filed (a) more than 6 months after the personal representative has been appointed, or (b) after the inventory has been filed, or (c) as a petition for a second or increased allowance, the Court may order a family allowance for a definite period, usually not to exceed 12 months. It is the policy of the Court not to make orders for family allowance for an unlimited period.

The petition must include, insofar as is possible, information as to the assets and income of the estate.

B. BY THE PERSONAL REPRESENTATIVE PURSUANT TO THE IAEA

If the estate is being administered under the IAEA, the personal representative may pay a family allowance without prior Court order by following the Notice of Proposed Action procedure.

C. INCOME AND EXPENSE DECLARATION

The petitioner must file an income and expense declaration with the petition for the family allowance, which demonstrates the need of the applicant with reference to his or her usual standard of living.

RULE 7
SALE UNDER COURT SUPERVISION

A. PUBLICATION OF NOTICE OF INTENTION TO SELL

The notice of intention to sell must be published in decedents' estates where the personal representative has not been given the power of sale in the will. Publication is not required where the personal representative is using the Notice of Proposed Action procedure under IAEA. For sales in conservatorship and guardianship proceedings, see Probate Code § 2543(b) and (c), and § 2591.5.

(Eff. 7/01/07)

The report of sale must be filed within 1 year of the last published date of notice of intention to sell. It is advisable that the published notice call for "cash or such credit terms and conditions as the Court may approve." There cannot be a variance in the terms of sale between those shown in the petition and those in the published notice.

The published notice of intention to sell real property is a solicitation for offers. No offer can be accepted prior to the expiration of the notice period specified in the notice of intention to sell.

On filing an appropriate affidavit or declaration, the Court may sign an order shortening the notice period to 5 days, with sale permitted on the sixth day after publication. The practical effect of this order is that only one publication is necessary.

B. PETITION FOR CONFIRMATION OF SALE OF REAL PROPERTY; SALE PROCEDURE

(1) Time for Filing Petition

A petition for confirmation of sale should be filed by the personal representative within 30 days after the date of acceptance of a

contract. Note that the property is initially sold by the personal representative and then returned to the Court for confirmation.

(2) Contract of Sale to be Filed With Court

At the time of filing the petition for confirmation, the petitioner must file a copy of the contract of sale.

(3) Deed of Trust

Upon an appropriate showing by the petitioner, the Court may approve a sale where part of the consideration is to be secured by a deed of trust of which the personal representative is the beneficiary.

(4) Sale Subject to Encumbrance

Sale of real property will not ordinarily be confirmed when the purchaser assumes or takes subject to an existing encumbrance, if as a result the estate remains subject to a contingent liability on the encumbrance (i.e., "wraps"). The petition must set forth the facts pertinent to such assumption agreement.

(5) Sales of Fractional Interests

Where the estate owns only a fractional interest in the real property, the petition must state whether the sale by the estate is conditioned upon closing of a sale of the unowned fraction.

RULE 8
PETITION FOR INSTRUCTIONS AND OTHER INSTRUCTIONS

A. PETITION FOR INSTRUCTIONS

In decedents' estates, guardianships, and conservatorships, a petition for instructions is available only when no other procedure is provided by statute. For example, the Court will not determine how a will should be interpreted or the manner in which an estate should be distributed on a petition for instructions. Such direction can be obtained only by a petition for distribution or by a petition to determine persons entitled to distribution.

B. APPOINTMENT OF SUCCESSOR TRUSTEE

A petition seeking appointment of a successor trustee or co-trustee should include a description of the procedure required by the trust instrument for such appointment, detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust, whether some or all of the beneficiaries of the trust have been consulted about the appointment of the proposed trustee, and a recommendation for the amount of the bond of the proposed trustee or a showing of good cause why a bond should not be required.

RULE 9
ACCOUNTS, REPORTS, FEES, COMMISSIONS, AND DISTRIBUTION

A. FORM OF ACCOUNTS

(1) Accounts in Decedents' Estates and in Trusts

All accounts filed in decedents' estates and in trusts, must follow the format described in Probate Code § 1061:

(Eff. 7/01/08)

a. Time Period

All accounts must set forth specifically the period covered by the account.

b. Summary of Account

Accounts must contain a summary or recapitulation in substantially the following format:

SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively, as set forth in this Summary of Account. The attached supporting schedules are incorporated by reference.

CHARGES	
Amount of Inventory and Appraisal (or if subsequent account, amount chargeable from prior account)	$_____
Additional Property Received (or supplemental inventories)	$_____
Receipts during Account Period Other than Principal	$_____

(Schedule ___)	
Gains on Sales (Schedule ___)	$_____
Net Income from Trade or Business (Schedule ___)	$_____
TOTAL CHARGES:	$_____
CREDITS	
Disbursements during Account Period (Schedule ___)	$_____
Losses on Sales (Schedule ___) (e.g., property distributed, homestead or other property set apart)	$_____
Net Loss from Trade or Business (Schedule ___)	$_____
Distributions (Schedule ___)	$_____
Property on Hand (Schedule ___)	$_____
TOTAL CREDITS:	$_____

c. Separate Schedules

Each figure on the summary of the account must be supported by separate schedules. These must include schedules of receipts and disbursements showing the date, amount, payor, payee, and nature or purpose of each item. Whenever possible, disbursements must show check numbers. The gain and loss schedules must reflect the sales price, the inventory or carrying value, and resultant gain or loss. The schedule of assets on hand must be itemized showing the inventory or acquisition value. For all accounts, there must be an additional schedule showing estimated market value of assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of all accounting periods subsequent to the initial account. The fiduciary may provide a good faith estimate for the value of real estate, a closely held business, or other assets without a ready market.

(Eff. 7/01/07)

Whenever an accounting period exceeds one year, or whenever income is received from any particular source more than twelve times in an accounting period, or whenever payments are disbursed to a particular payee more than twelve times in an accounting period, it is required that the schedules for receipts and for disbursements be categorized into subschedules reflecting the particular income sources or payees for whom there are more than twelve entries per accounting period. See 2 California Decedent Estate Practice §§19.19 and 19.22 (Cal CEB 1986).

When a trust accounting submitted for approval by the Court contains disbursements for trustee or attorney fees, the trustee or attorney must furnish evidence to support the disbursements for fees in a manner consistent with the requirements of the trust instrument. If the trust permits "reasonable fees" without court approval, for instance, the trustee shall furnish an explanation of how the "reasonable fee" was calculated.

(Eff. 7/01/02)

d. Income and Principal Accounting

All accounts for entities that have separate principal and income beneficiaries must allocate receipts and disbursements between principal and income.

e. Waiver of Account

The petition for final distribution on waiver of account must contain the information required in CRC 7.550, as well as the fair market value of assets on hand, and must comply with CRC 7.551-7.552.

(Eff. 7/01/08)

(2) Accountings in Guardianships and Conservatorships

(Eff. 7/01/08)

a. All accountings in guardianships and conservatorships filed on or after January 1, 2008, must follow the content and format required in CRC 7.575. Accountings are designated as either standard or simplified. All accountings must use Judicial Council Form GC-400 (SUM)/GC-405 (SUM) for the Summary of Account. Guardians and conservators presenting standard accounts may, but are not required to, use the optional Judicial Council forms designated as GC-400. Those guardians and conservators presenting standard accountings who do not use the optional Judicial Council forms are required to use the content and format called for in those forms, but may submit accountings prepared on conventional accounting programs. Guardians and conservators presenting simplified accounts must use the Judicial Council forms designated as GC-405.

b. Organization of Schedules: All accountings must provide all information required in Probate Code §§1060-1064.

Receipts schedules must use the categories and format used by the optional judicial forms:

Dividends; Interest; Pensions, Annuities, other Periodic Payments; Rent; Social Security, Veterans Administration, and Other

Public Benefits; Other Receipts.

Schedules for Receipts of Principal, Gains on Sales, Income from Business, and Loss on Sales do not have a mandated format.

Disbursements schedules must use the categories used by the optional Judicial Council forms:

Caregiver Expenses; Residence or Long Term Care Facility Expenses; Ward's Educational Expenses; Fiduciary and Attorney Fee Expenses; General Administration Expenses; Investment Expenses; Living Expenses; Medical Expenses; Property Sale Expenses; Rental Property Expenses; and Other Expenses. See CRC 7.575 (e).

(Eff. 7/01/08)

c. At the time the Court appoints a conservator or guardian, and unless the court waives the requirement of the conservator or guardian to file periodic accountings with the Court, the court must set a compliance date for the conservator or guardian to file his or her first account and report, which must be on the Friday calendar at 9:30 a.m. no later than 60 days after the first year anniversary of the appointment of the conservator or guardian. If the conservator or guardian has filed the accounting, this will be a nonappearance matter. At the time the court hears an account and report, it must set a compliance date for the next account and report, which must be on the Friday calendar at 9:30 a.m. no later than 60 days after each subsequent biennial anniversary of the conservatorship or guardianship.

d. Pursuant to Probate Code § 2620(c)(3), the private professional or licensed guardian or conservator may elect to lodge with the Court the originals of the account statements referenced in § 2620(c)(1), (2), and (3). The originals of the account statements shall be released by the Court as provided in § 2620(c)(3).

(Eff. 7/01/07)

(3) Statement Re Sufficiency of Bond in Reports Accompanying Accountings

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code § 2320 and CRC 7.207, and, if not, what steps are being taken to comply with the law and rule.

(Eff. 1/01/10)

B. ALLEGATIONS REGARDING CREDITOR'S CLAIMS AND REPORT OF ACTIONS TAKEN UNDER IAEA

It is not sufficient in any petition for distribution to allege merely that all claims have been paid. Petitioners must provide all information required under CRC 7.403. The allegations regarding disposition of all claims must appear in the petition for final distribution even though they may have appeared in whole or in part in prior petitions. See 5.C for report of actions taken under IAEA.

C. FRANCHISE TAX BOARD CERTIFICATE

Where an estate's inventory is appraised at $1,000,000.00 or more and $250,000.00 or more is distributable to beneficiaries not residing in California, an estate income tax certificate must be obtained from the Franchise Tax Board before the court will order final distribution. See Revenue and Taxation Code § 19513 and Title 18 CCR § 19513 and CRC 7.551.

(Eff. 7/01/04)

D. STATUTORY COMMISSIONS AND FEES (Eff. 1/01/04)

All parties and counsel are directed to CRC 7.700 and 7.701.

(1) Payable After Court Order

Statutory commissions and fees (herein "statutory compensation") are payable only after a Court order authorizing them.

(2) Both Halves of Community Property Probated

If both halves of the community property are properly included in the probate proceeding, statutory compensation calculated on both halves of the community property will be allowed.

(3) Calculation

Unless statutory compensation is waived, calculation of the statutory compensation (including calculation of the fee base) and any prior payments of statutory compensation must be included in the petition for compensation.

(4) Allowance on Account

Allowances on account of statutory compensation will generally be allowed in proportion to the work completed.

(5) Accounting Waived

Where the accounting is waived, the basis of the statutory compensation shall be the inventory value of the estate plus, if applicable, receipts, gains on sales, less losses on sale, as provided in CRC 7.550 and 7.705. Such receipts and gains or losses must be reflected in the report of the personal representative. (Eff. 1/01/09)

(6) Payment of Costs, Fees, and Commissions Where Cash Insufficient

Where the estate at final distribution has no cash or insufficient cash to pay costs, attorney's fees, and/or personal representative's commissions, an explanation of the source of payment of these obligations must be submitted.

E. COMPENSATION FOR EXTRAORDINARY SERVICES

(1) Explanation Required

A detailed explanation of the extraordinary services performed and the amount of compensation requested for such services must be separately stated in a declaration under penalty of perjury executed by the person rendering the services. See also the standards set forth in Section 9.G. The explanation must include the statement of facts required by CRC 7.702.

(Eff. 1/01/04)

The Court may consider the amount of statutory fees when determining compensation for extraordinary services.

(2) Court Appearance

In all cases in which there is a request for compensation for extraordinary services, the attorney for the personal representative or the personal representative must be present at the hearing, unless the matter is on the approved calendar.

(3) Allowance on Account

Allowances on account of compensation for extraordinary services ordinarily will not be allowed.

F. COSTS

Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items advanced by such party must be separately stated with a description of each cost item.

G. COMPENSATION FOR GUARDIANS, CONSERVATORS, TRUSTEES, AND THEIR COUNSEL, AND FOR COUNSEL FOR A CONSERVATEE OR WARD

A petition for compensation of a guardian, conservator, trustee, and counsel, or for counsel for a conservatee or ward, must be accompanied by a complete statement of the services rendered, an explanation of the value or benefit of those services to the estate, and the total amount requested for such services, made under penalty of perjury and executed by the person rendering the services. The nonexclusive factors the Court may consider in determining the fees of a guardian or conservator are listed in CRC 7.756. The nonexclusive factors the Court may consider in determining the fees of a trustee are listed in CRC 7.776. Where a trust accounting that is submitted for court approval shows payments made to the trustee, guardian, conservator, or his or her counsel, or counsel for a ward or conservatee, it must be accompanied by the information described in this paragraph, even though the trust instrument may provide for such payments without requiring court approval. All petitions for compensation to a conservator, guardian, or counselor for a conservator, guardian, conservatee, or ward, or for compensation to a trustee or counsel for a trustee in a matter where a trust has been created to hold the assets of a conservatee or ward, must be served on the Court Investigator as well as on all persons required under the law to be served. (Eff. 1/01/09)

A conservator or guardian who is a professional may not necessarily be compensated for all services rendered at that person's ordinary professional rate. Requests for fees by family-member conservators, including registered domestic partners, for visits to the conservatee will ordinarily not be approved.

(Eff. 7/01/08)

H. NO COMPENSATION WITHOUT COURT ORDERS

There is no authority for paying any compensation to an executor, an administrator, a guardian, a conservator, or an attorney for any such fiduciary, or an attorney for the conservatee or ward, from the estate in advance of a court order authorizing such payment. There is no authority for paying any compensation to the trustee or the attorney for the trustee from a trust to which CRC 7.903 applies in advance of a Court order authorizing such payment.

(Eff. 7/01/05)

I. PROPERTY TO BE DISTRIBUTED AND DISTRIBUTEES MUST BE LISTED

A petition for distribution must describe in detail all property to be distributed as set forth in CRC 7.651-652.

(Eff. 7/01/04)

An order of distribution must be drafted so that it is complete without reference to the petition, and without reference to any documents that are not part of the order. Complete legal descriptions of all assets (e.g., real property, securities, and security interests) and the full names of all distributees must be set forth in the order. It is suggested that an order of distribution include the current address of devisees of real property and the assessor's parcel number of the property.

J. AGREEMENTS FOR DISTRIBUTION OF ASSETS

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be on file a written agreement signed by all parties affected by the distribution.

K. FILING OF RECEIPTS FOR PRELIMINARY DISTRIBUTIONS

Receipts for property distributed pursuant to a petition for preliminary distribution must be on file before the Court will approve a petition for final distribution.

(Eff. 7/26/00)

RULE 10
SPOUSAL OR REGISTERED DOMESTIC PARTNER PROPERTY PETITIONS

A. WHEN FILED WITH PETITION FOR PROBATE

A spousal or registered domestic partner property petition must be filed separately from a petition for probate of the will or for administration of the estate, as set forth in CRC 7.301. If the two are filed simultaneously, or if probate proceedings are already pending, an additional filing fee for the spousal or registered domestic partner property petition will not be required. Both petitions must be filed under the same case number.

(Eff. 1/01/05)

B. SURVIVORSHIP CONDITION IN WILL

If the right of a spouse or registered domestic partner to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse or registered domestic partner until the expiration of the time period. If the petition is filed before the expiration of the survivorship period, a separate declaration executed by the petitioner after the survivorship period has expired must be filed with the Court.

(Eff. 1/01/05)

RULE 11
CONSERVATORSHIPS

A. PETITION FOR APPOINTMENT OF CONSERVATOR

(1) Bonds

Bond will ordinarily be required for the first year for the conservator of the estate, even though the conservatee has signed a nomination of conservator waiving bond. The provisions of Sections 4.C through 4.F of these rules apply to conservators. The amount of the bond must include one year's income from all sources of income of the conservatee, any sums required under Probate Code § 2320(c), and the value of real property as specified in Rule 4.A of these rules for conservators authorized to sell or encumber such property pursuant to Probate Code § 2590. (Eff. 1/1/09)

(2) Independent Powers

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reasons for the need for each power requested. (Eff. 1/01/08)

(3) Medical Treatment Power

A petition seeking authorization to give informed consent for medical treatment of a conservatee must be supported by an appropriate declaration on the Judicial Council form as described below, furnishing evidence required by Probate Code § 813, stating that there is no form of medical treatment for which the conservatee has the capacity to give consent and the reasons therefore and signed by a medical practitioner or licensed psychologist, which must be filed with the Court prior to the hearing. This form may be filed as an attachment to the Petition for Appointment of Conservator and served upon all persons who receive the Petition. If this form is not attached to the Petition, it must be served separately by mail or personally, at the option of petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching two Confidential Document Cover Sheets (see Attachment PB-4003) to it at the time it is filed. It is required to use Judicial Council form GC-335, "Capacity Declaration Conservatorship," as described below: (Eff. 1/01/09)

a. For a Conservatorship of the Person only, In Which No Dementia Powers Are Being Sought: California Rules of Court require the use of Judicial Council form GC-335 to provide the evidence necessary to support a finding by the Court that a conservatee lacks the capacity to give an informed consent for any form of medical treatment.

b. For a Conservatorship of the Person only, With Request for Dementia Powers: Attach Judicial Council form GC-335A to Judicial Council form GC-335. (Eff. 7/01/04)

If the Petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity—HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified. (Eff. 1/01/06)

(4) Filing Procedures for Conservatorship/ Guardianship Calendar

All orders for appointment of conservator or guardian must be delivered to the Probate Examiner's office 4 court days prior to the date of the appointment hearing. All other papers (e.g., proofs of service) must be on file or delivered to the Probate Examiner's office by 4 p.m. on the Friday prior to the hearing. (Eff. 1/01/09)

(5) Evidence Required to Support Petition for Conservatorship of Estate or Person and Estate (Eff. 1/01/09)

Because a Conservatorship of the Estate or of the Person and Estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds the estate, a petitioner who seeks appointment of a conservator of the estate and is using a medical or psychological professional as declarant must submit a Judicial form GC-335, "Capacity Declaration—Conservatorship" with Attachment PB-4015, "Capacity Declaration—Conservatorship of the Estate Attachment" attached, to provide evidence establishing that the proposed conservatee suffers from a deficit in mental functions that significantly impairs the proposed conservatee's capacity to make decisions, consistent with the requirements of Probate Code § 811. (Eff. 1/01/09)

If the petitioner who is not relying upon a medical or psychological professional to complete the Capacity Declaration wishes to seek appointment of a conservator of the estate, the petitioner must have a lay declarant complete the "Layperson's Declaration re Legal Capacity" shown as Attachment PB-4016 to these Local Rules. (Eff. 7/01/06)

The Capacity Declaration may be filed as an attachment to the Petition for Appointment of Conservator and served upon all persons who receive the Petition. If the Capacity Declaration is not attached to the Petition, it must be served separately by mail or personally, at the discretion of the petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching two completed Confidential Document Cover Sheets (see attached form PB-4003) to it at the time it is filed. (Eff. 7/01/06)

If the Petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity—HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified. (Eff. 1/01/06)

B. REFERRAL FOR INVESTIGATOR'S REPORT; TRANSMITTAL OF DOCUMENTS TO COURT INVESTIGATOR

A local form entitled "Referral for Investigator's Report—Conservatorship" (attached form PB-4002) must be completed and signed under penalty of perjury by the proposed conservator and submitted at the time the petition is filed. This form shall be confidential. The petitioner must provide copies of the following documents, for use by the Court Investigator, with the Referral form: (1) Petition for Appointment of Conservator and attachments; (2) Confidential Supplemental Information Form; (3) Legal Capacity Declaration; (4) all other documents submitted to the court as evidence in the matter. All persons objecting to an appointment must submit a copy of the objections and any other evidence to be filed in the matter to the Court Investigator.

(Eff. 1/01/09)

C. NOTICE OF HEARING

The petitioner should determine how much time will be required for any agency (e.g., Court Investigator's office, San Andreas Regional Center, etc.) to complete its report or evaluation and set the petition for hearing accordingly.

D. DUTIES OF CONSERVATOR

To assure that their duties and obligations are understood, all proposed conservators must file with the Court, before Letters of Conservatorship are issued, the Judicial Council form entitled "Duties of Conservator." The form may be signed and submitted prior to the date set for hearing. It is not necessary for proposed conservators to check boxes on page 4 of the form relating to acquisition of the handbook. See Section 11.G.

E. ATTENDANCE AT THE HEARING

The proposed conservatee, if located in California, must attend the hearing for appointment of a conservator unless:

(1) The proposed conservatee states to the Court Investigator that he or she approves both the conservatorship and the proposed conservator(s) and does not wish to attend; or

(2) The proposed conservatee states to the Court Investigator that he or she objects either to the conservatorship or the proposed conservator but chooses not to attend; or (Eff. 1/01/09)

(3) Judicial Council form GC-335, indicating a medical inability to attend, has been filed. When filing a Judicial Council form GC-335 to provide evidence of a medical inability to attend, such reasons as "senility," "hard of hearing," or "confused" are insufficient. Any condition that would result in pain or potential medical harm to the conservatee is acceptable, as is incontinence. (Eff. 1/01/09)

If the Petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity—HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified. (Eff. 1/01/06)

If the petitioner is represented by an attorney, the attorney must always attend the hearing.

If the proceeding is for the establishment of a limited conservatorship, the proposed conservatee should arrive one-half hour before the hearing to be interviewed by the Public Defender.

(Eff. 7/01/02)

F. CONTESTED MATTERS

When a party becomes aware that a matter will be contested, that party must advise the Court of the estimated time necessary to hear the matter.

The Court's primary concern is the health and welfare of the conservatee. Parties in a contested matter should be prepared to proceed on the day set for hearing. The Court will ordinarily hear brief testimony of the objecting parties and render a decision forthwith.

G. PURCHASE OF HANDBOOK AND VIEWING OF FILM

Before letters of conservatorship are issued, all conservators (except corporate or institutional conservators) must obtain a copy of the Handbook for Conservators published by the Judicial Council of California and view a film on the duties and responsibilities of a conservator. Proper proof of the purchase of the handbook and attendance of the film viewing will be required. The handbook and local supplement will be available for purchase at the Probate Clerk's office. The cost of the handbook may be reimbursed from the conservatorship estate.

Viewing of the film is free of charge and is scheduled at the court courthouse on the day of the hearing to appoint conservator. A conservator who resides out of the County of Santa Clara may arrange with his/her attorney to view the film through the attorney's office, or may make arrangements to view the film through the Court Investigation office of the conservator's county of residence.

H. ORDER APPOINTING CONSERVATOR

On the Judicial Council form entitled "Order Appointing Probate Conservator," paragraphs 7 and 21 concerning ability to vote should be left blank. The Court will make its own determination at the hearing based upon the Court Investigator's report. Paragraphs 9 and 20 concerning fees refer only to Court appointed counsel for the conservatee. These paragraphs do not apply to the attorney for the conservator. In all cases, the following information should be inserted at paragraph 11: Court Investigations Unit, 191 North First Street, San Jose, California 95113, telephone (408) 882-2761.

(Eff. 7/01/07)

I. FILING OF INVENTORY AND APPRAISAL

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. A copy must also be served on the Court Investigator. Where the conservatorship estate consists of community property managed by a nonconservatee spouse or registered domestic partner, who either is or is not the conservator, the community property is not administered as part of the conservatorship estate, should not be part of the inventory, and should not be accounted for. (See Probate Code § 3051.)

(Eff. 1/01/08)

At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the conservator and on the attorney for the conservator.

(Eff. 7/01/08)

J. LETTERS OF CONSERVATORSHIP OF THE ESTATE

The conservator is advised to record letters of conservatorship of the estate in any county where real property belonging to the conservatee is located. (Probate Code § 1875.)

K. ACCOUNTINGS: REFERRAL TO COURT INVESTIGATOR

At the time of filing of the conservator's accounting, a "Referral for Investigator's Report" form (attached form PB-4002) must be submitted, attached to a copy of the accounting, for review by the Court Investigator. See also Section 9.A.(2) on the format of accountings and on accounting compliance dates.

(Eff. 1/01/09)

L. SALE OF CONSERVATEE'S RESIDENCE

The sale of the conservatee's residence (including a mobile home) will not be approved by the Court until a Court Investigator's report showing the necessity for the sale is on file. The conservator must file a declaration complying with Probate Code § 2540(b) whenever the conservator seeks authorization to sell the conservatee's present or former personal residence. A copy of the notice of the hearing and the required declaration, as well as any petition filed regarding the sale, must be sent to the Court Investigator with the required "Referral for Investigator's Report" form.

Sale of the residence must comply with the procedures required for sale of real or personal property and Probate Code §2591.5.

(Eff. 1/01/08)

M. CHANGE OF RESIDENCE OF CONSERVATOR OR CONSERVATEE

A copy of the Notice of Intention to Change Residence of the Conservatee, and also the Notice of Change of Residence of the conservator or conservatee, must be filed with the Court and mailed to the Court Investigator. This is in addition to the notice requirements of Probate Code § 2352.

(Eff. 7/01/08)

N. REMOVAL OF CONSERVATEE FROM CALIFORNIA

A conservatee who is under a conservatorship of the person and who is a California resident may be moved from California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the conservatee must be returned to California within 4 months unless a conservatorship proceeding (or its equivalent) is commenced in the place of the new residence. If a conservatee is not returned to California, the conservator must file a declaration showing proof of the establishment of the conservatorship (or its equivalent) in the new jurisdiction. (See Probate Code § 2352.) Petitioner must submit a local form entitled "Referral for Investigator's Report" (Attachment PBRULE 4002) upon the filing of a petition to move a conservatee from California and must attach a copy of the notice of hearing and a copy of the petition to the referral form for review by the Court Investigator.

(Eff. 7/01/06)

O. APPOINTMENT OF LIMITED CONSERVATOR FOR THE DEVELOPMENTALLY DISABLED

If the requested conservatorship is for a developmentally disabled adult, the proceedings must comply with the limited conservatorship code sections, even though the petition requests establishment of a general conservatorship as an alternative.

A copy of the notice of hearing and the petition must be sent to the Public Defender assigned to the conservatorship calendar and to the appropriate Regional Center. The addresses for the local agencies are:

Probate Deputy
Office of the Public Defender
120 W. Mission Street
San Jose, California 95110

San Andreas Regional Center
Attn: Regional Center Psychologist
P.O. Box 50002
San Jose, California 95150

P. REMOVAL OF CONSERVATOR

Individuals requesting removal of a conservator may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Conservator (attached form PB-4040). Anyone objecting to a petition to remove the conservator

may use the local form entitled Objection to Petition to Remove Conservator (attached form PB-4035).

(Eff. 1/01/08)

Q. TERMINATION OF CONSERVATORSHIP

Petitioner must submit a local form entitled "Referral for Court Investigator—Conservatorship" (attached form PB-4002) upon the filing of a petition to terminate a conservatorship and must attach a copy of the notice of hearing and a copy of the petition to the referral form for review by the Court Investigator.

(Eff. 1/01/08)

Upon termination of a conservatorship, all claims filed by the Court Investigator's unit for its services, unless waived, must be paid before the Court will sign an order settling the final account. See CRC 7.1052 and 7.1054.

(Eff. 7/01/04)

R. DEATH OF CONSERVATEE

(1) Termination Upon Death When Account Is Due

Upon the death of the conservatee, the conservator shall turn over the conservatee's assets to the appointed personal representative or, if none, to the person or persons entitled thereto, less a reasonable reserve for closing expenses and attorney and conservator fees. (Eff. 7/01/05)

The conservator's final account shall include an account for the period ending on the date of death of the conservatee, and shall show all property on hand as of the date of death of the conservatee. Additionally, pursuant to Probate Code § 2620 (b), a supplemental accounting, to be incorporated in the final account and report, shall reflect all post-death transactions and show property on hand as of the filing of the accounting. If a personal representative has been appointed in a probate proceeding following the death of the conservatee, then the probate case number must be set forth in the final report and account. (Eff. 1/01/09)

(2) Termination Upon Death When No Account Is Due

Upon the death of the conservatee, if no account is due, the conservator must file a notice of death of conservatee with a photocopy of the conservatee's death certificate attached and must serve a copy of the notice on the Court Investigator.

S. CONFIDENTIAL SUPPLEMENTAL INFORMATION (Eff. 1/01/09)

The supplemental information required of conservators by Probate Code § 1821(a) at appointment must be filed on Judicial Council form GC-312 ("Confidential Supplemental Information") separately from the petition and must have two completed Confidential Document Cover Sheets (see attached form PB-4003) attached. This Confidential Supplemental Information form must be verified (Probate Code §1021).

(Eff. 1/01/09)

T. TEMPORARY CONSERVATORSHIPS

(1) Petition for Appointment

The petition for appointment of a temporary conservator may be filed only with or after the filing of a petition for appointment of a permanent conservator. The petition must state facts establishing the urgency requiring the appointment of a temporary conservator. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed conservatee will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause. (Eff. 1/01/09)

(2) Immediate Notification of Court Investigator

Petitioner or petitioner's attorney should contact the Court Investigator's Office at (408) 882-2761 as soon as possible when it appears that a temporary conservatorship may be requested in order that the Investigator can begin the investigation and report necessary for the appointment of a temporary conservator. (Eff. 1/01/09)

(3) Prior Review of Petition

All petitions for a temporary conservatorship must be presented to the Probate Examiner's office for review before presentation to the Court.

(4) Notice

Since a petition for temporary conservatorship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the 5-day notice requirement. Petitioner must comply with the requirements of CRC 7.1062. If notice is dispensed with by

the Court, the petition may be heard on an ex parte basis. (Eff. 7/01/08)

(5) Letters of Temporary Conservatorship

Letters of temporary conservatorship expire on the appointment of a general conservator. Letters of temporary conservatorship should be recorded in counties where conservatees possess real property. (See Probate Code § 1875.) When the temporary conservator will come into possession of personal property of the conservatee, bond as provided in Rule 11.A.(1) of these rules must be posted before temporary letters of conservatorship of the estate can be issued. (Eff. 7/01/07)

(6) Powers of Temporary Conservator

The temporary conservator has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary conservatorship. There is no provision in the law for granting exclusive medical powers under a temporary conservatorship, absent a hearing for a grant of powers under Probate Code § 1880, et seq. A temporary conservator may also seek authorization to give consent for treatment under Probate Code § 2357. The court requires that there be a grant of exclusive medical powers under section 1880 for there to be a grant of powers under Probate Code § 2356.5. (Eff. 7/26/00)

(7) Change of Residence of Temporary Conservatee

When the residence of a temporary conservatee is proposed to be changed, the hearing must be calendared for the first Tuesday afternoon conservatorship appointment calendar following the date of filing of the petition. A "Referral for Court Investigator—Conservatorship" form (Attachment PB-4002) must be submitted when the petition is filed, and a copy of the petition must be attached to the referral and submitted to the clerk at that time. See Probate Code § 2253. (Eff. 1/01/08)

U. PRIVATE PROFESSIONAL CONSERVATORS

(1) Appointment of Professional Fiduciary as Conservator (Eff. 1/01/09)

A person seeking appointment as a professional conservator, must be licensed as a professional fiduciary, as defined in Business & Professions Code §§ 6500 et seq. before the Superior Court can make such appointment. All pleadings filed by a professional fiduciary must include the fiduciary's license number as issued by the Professional Fiduciary Bureau. (Eff. 1/01/09)

(2) Disclosure of Fee Schedule

At the time a private professional conservator is nominated to serve as conservator, the petitioner must attach the private professional's fee schedule to the petition for appointment of conservator and must serve the fee schedule as part of the petition upon all persons entitled to service of the petition under Probate Code § 1822 and also to the Court Investigator. If the Court appoints a private professional fiduciary who was not nominated in the petition as a temporary conservator, the private professional must attach his/her fee schedule to the order appointing temporary conservator at the time the order is filed with the Court and must mail a copy of the fee schedule to all persons entitled to service of the petition under Probate Code § 1822 and also to the Court Investigator. (Eff. 7/01/08)

(3) Filing of Estimated Fees; Compliance Hearing

Unless the Court otherwise orders, at the time of the appointment, the Court must order the private professional conservator to file with the Court a plan of estimated fees of the private professional conservator, his or her staff, and his or her counsel, to cover the first year of the conservatorship, and to serve a copy of the plan of estimated fees on all persons entitled to notice of the original petition under Probate Code § 1822, the Court Investigator, and any persons who have requested special notice. The Court must set a date not more than 94 calendar days after the appointment for a compliance hearing, which shall be a nonappearance matter if the plan of estimated fees has been filed. If the plan of estimated fees is not on file at that time, the Court must issue an order to produce the plan of estimated fees, which must be served by certified mail on the conservator and on the attorney for the conservator. The plan of estimated fees is not binding upon the conservator and/or counsel. All conservator fees and attorney fees are subject to review and approval by the Court, pursuant to Probate Code § 2640 et seq. (Eff. 7/01/08)

V. CONSERVATEES' TRUSTS

(1) When a conservator or some other person seeks an order under the doctrine of substituted judgment to create a trust that contains assets of the conservatee, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and periodic accountings to the court. If the conservator of the estate is named trustee, the conservator may elect to treat the trust estate as part of the conservatorship estate for purposes of bond and accounting and shall not be required to post a separate bond as trustee. The trustee must file the trust, the court order approving establishment of the trust, and the trustee's bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust may be filed as a confidential document by attaching two copies of the Confidential Document Cover Sheet. (See attached form PB-4003.)

(Eff. 7/01/07)

(2) When a conservator or some other person seeks appointment of a successor trustee of the conservatee's existing living trust,

the court may require the successor trustee to post a bond, place the trust under court supervision, and provide accountings for the trust parallel to the accounting schedule of the conservatorship. In such case, the trustee must file the trust, the court order approving the trust, and the bond, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the appointment of the successor trustee. The trust may be filed as a confidential document by attaching two copies of the Confidential Document Cover Sheet. (See attached form PB-4003.)

(Eff. 7/01/06)

W. NOTICE TO COURT INVESTIGATIONS UNIT OF SUBSTITUTED JUDGMENT PETITIONS

Whenever a petition for substituted judgment is brought, the petitioner shall complete the local form entitled "Referral for Court Investigator—Conservatorship" (attached form PB-4002) and must attach a copy of the notice of hearing and a copy of the petition to the referral form for review by the Court Investigator.

(Eff. 1/01/08)

RULE 12
GUARDIANSHIPS

A. GUARDIAN OF MINOR'S ESTATE

(1) Investigation

The proposed guardian must complete and sign under penalty of perjury a "Referral for Court Investigator & Questionnaire—Guardianship" (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the "Referral for Court Investigator & Questionnaire—Guardianship" the proposed guardian must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513. (Eff. 1/01/09)

(2) Bond Required

Bond will be required for the first year for the guardian of a minor's estate even if a nomination of guardian has been signed waiving bond. The provisions of sections 4.C through 4.F of these local rules apply to guardianships. The amount of the bond must include one year's income from all sources of income of the ward, any sums required under Probate Code § 2320(c), and the value of real property as specified in Rule 4.A of these rules for guardians authorized to sell or encumber such property pursuant to Probate Code § 2590. (Eff. 1/01/09)

(3) Independent Powers

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reason for the need for each power requested. (Eff. 1/01/08)

(4) Filing of Inventory and Appraisal

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. A copy must also be served on the Court Investigator. At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the guardian and on the attorney for the guardian. (Eff. 7/01/08)

B. PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR'S PERSON

(1) Investigation

The proposed guardian must complete and sign under penalty of perjury a "Referral for Court Investigator & Questionnaire—Guardianship" (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the "Referral for Court Investigator & Questionnaire—Guardianship" the proposed guardian(s) must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513. (Eff. 1/01/08)

(2) Notice

The following are the local addresses for notice according to Probate Code §§ 1516 and 1542:

Program Manager, Emergency Response Services
Santa Clara County Social Services Agency
333 W. Julian Street San Jose, California 95110

Social Services Agency
Department of Family and Children's Services
333 W. Julian Street
San Jose, California 95110 (Non-relative guardians only)

The California Department of Social Services
744 P Street
Sacramento, California 95814 (Non-relative guardians only)

(Eff. 7/01/02)

(3) Minor's Father Unknown

If it is alleged that the minor's father is unknown, a photocopy of the minor's birth certificate should be attached to the affidavit or declaration in support of an order dispensing with notice. Use of the terms "withheld" on the birth certificate with reference to the father does not mean "unknown," and should be further explained in the allegation.

C. OBJECTION TO GUARDIANSHIP

Individuals objecting to a petition to establish a guardianship may use the local form entitled Objection to Guardianship (attached form PB-4043). All persons objecting to an appointment must submit a copy of the objections and any other evidence to be filed in the matter to the Court Investigator.

(Eff. 1/01/08)

D. DUTIES OF GUARDIAN

To assure that their duties and obligations are understood, each guardian must file with the Court, before letters of guardianship are issued, the Judicial Council form entitled "Duties of Guardian" (Form GC-248). The form may be signed and submitted prior to the date set for hearing.

(Eff. 1/01/08)

E. ATTENDANCE AT THE HEARING

The proposed guardian, the petitioner, and the petitioner's attorney must attend the hearing. The guardian will receive instructions concerning the guardian's duties immediately following the hearing.

(Eff. 7/26/00)

F. CONTESTED GUARDIANSHIP

(1) Family Group Conferences/Mediation

If there is a contested Guardianship of the Person or a contested Petition for Visitation in a Guardianship matter, the Court may order the parties to participate in mediation or one or more Family Group Conferences through Family Court Services (FCS) or a private mental health professional agreed to by all parties. The referral to a Family Group Conference will usually be made at the first hearing where any party objects to the guardianship or a request for visitation. Mediation is confidential, whereas Family Group Conferences are not confidential. All parties and their counsel may participate in the conferences, along with counsel for the minor(s). The minor(s) may be required to attend any Family Group Conferences at the discretion of the person conducting the conference or as ordered by the Court.

(2) Emergency Screenings

In any case in which an emergency exists, the Court may order a staff member of FCS to conduct an "emergency screening" (a preliminary and limited evaluation). The purpose of the screening shall be to provide the Court with recommendations regarding the temporary custody, visitation, and related conditions for the minor children who are the subject of the guardianship.

If the parties agree to and sign the screening recommendations, they shall be submitted to the Court for review and signature.

If a party objects to the screening recommendations, a brief hearing, generally less than 30 minutes, will be held on the day of the screening, or as soon as possible.

Fees will be charged for emergency screenings by FCS, absent a Fee Waiver.

(3) Documents provided to evaluator or screener

Any documents provided to an evaluator or screener shall be accompanied by either Judicial Council Proof of Service (POS-020

or POS—030) or the FCS "Declaration of Mailing or Personal Service" form (FM-1061), except for documents handed to an evaluator or screener in the presence of the other party or counsel (in which case copies shall be provided at the same time to the other party or counsel). Whichever form is used, the number of submitted pages shall be stated. FCS may require a party to index and prioritize the review of submitted documents.

(4) Miscellaneous

a. Complaints: A complaint may be submitted by letter to FCS with proof of service of a copy to all other parties.

b. Challenges: Peremptory challenges to FCS evaluators, private evaluators appointed by the Court, and mental health professionals appointed by the Court to do psychological testing shall not be permitted. Challenges for cause of such individuals shall first be directed to the director of FCS. If that does not resolve the matter, such a challenge shall be directed in writing to the Probate Judge. Copies of any challenges for cause shall be provided to all counsel and self-represented parties.

(5) Evaluations

a. The Court may, in its discretion, order an evaluation by FCS regarding issues relating to a contested guardianship. Such an evaluation shall be a supplement to the report of the Court Investigator. All parties and their counsel, along with counsel for the child(ren), shall attend the initial appointment for the evaluation. The evaluation report shall be completed within 90 days from the initial appointment with the evaluator.

b. The director of FCS (or the director's designee) shall have the exclusive responsibility for case assignment to evaluators within FCS.

c. Child(ren) must be present for the initial evaluation appointment when (and only when) a party participating in the evaluation resides more than 100 miles from San José, or the Court or the evaluator directs that the child(ren) be available. When the child(ren) are required to be present under this Rule, the custodial party shall bring an adult who can care for the child(ren). All parties shall cooperate with an evaluator in arranging times for the evaluator to see the child(ren) after the initial evaluation appointment, if requested by the evaluator. (Eff. 1/01/09)

d. The evaluator will interview the parties, separately or jointly as appropriate, and their attorneys, and may schedule additional interviews with the parties, child(ren), or others to complete the evaluation. If one attorney fails to appear at the initial appointment, as required, the evaluator has the discretion to proceed with the parties only and to reschedule the appointment with all attorneys. Sanctions may be imposed, upon notice, for the attorney's failure to appear.

e. Confidentiality of Evaluation Reports: Evaluation reports are confidential and shall be sent to attorneys and self-represented parties only. The confidential report shall not be duplicated, disseminated, or in any other way provided or shown to any individual not a party to the proceedings, except consulting experts, court ordered therapists, and court ordered evaluators. The evaluation report shall be placed in the confidential part of the Court file. Evaluation reports, including psychological evaluations, shall not be attached as exhibits to any papers filed with the Court.

f. Fees: Fees will be charged by FCS for evaluations, unless a waiver is granted. When the Court orders a custody/visitation evaluation through FCS, the parties shall submit deposits or fee waiver requests to FCS within 5 court days of receipt of the Court's order.

g. Any party shall have 15 calendar days after the date of mailing of the evaluation recommendations to file and serve written objections to the recommended order.

h. If objections are filed, the parties shall contact the evaluator to schedule a meeting to discuss the objections. This meeting shall take place before the Guardianship Settlement Conference (GSC). If any party fails to cooperate in setting, or fails to attend, this meeting after objections, the Court at the GSC may sign the recommended order and may order sanctions.

i. Objections: Objections shall be in writing and shall include the following:

i. the specific paragraphs and language to which the party objects;

ii. the reasons for the objections; and

iii. the proposed modified language.

Objections shall be filed with the Court, along with a proof of service on all counsel or self-represented parties. FCS or the private evaluator must be served with an endorsed filed copy of the objections, which must also be shown on a proof of service.

If no objections are filed within 15 calendar days from the date of the mailing of the evaluation recommendations, the recommended order shall be submitted to the Court for review and signature.

(6) Guardianship Settlement Conference (GSC)

a. If the parties are not able to resolve the objections in the meeting with the evaluator following the filing of the objections, a

GSC shall be calendared with the Court. The GSC shall be set within 30 days of the meeting with the evaluator.

b. All attorneys and parties and the evaluator shall attend the GSC at the scheduled time and place, to address the settlement of all contested issues or the issues to be tried.

c. Statement of Issues: No settlement conference statement shall be required for a GSC; however, each party shall file and serve a Statement of Issues at least 10 calendar days before the GSC. The Statement of Issues shall clearly set forth any remaining issues and any proposed alternative language. Previously filed objections may be attached and incorporated by reference. In addition, the Statement of Issues shall state the time estimated for trial and provide a list of witnesses anticipated to be called at trial. Each party shall bring 2 copies of the Statement of Issues to the GSC.

d. If agreement is not reached at the GSC, the Court may set the case for trial or hearing.

e. Failure to Appear: If a party fails to appear at the GSC, a hearing may be held that day and custody/visitation orders may be made. In addition, on notice to the parties, the Court may order sanctions for the failure to appear.

(Eff. 1/01/09)

G. CHANGE OF RESIDENCE OF GUARDIAN OR WARD

A copy of the Notice of Intention to Change Residence of the Ward, and also the Notice of Change of Residence of either the guardian or ward, must be mailed to the Court Investigator. This is in addition to the filing and notice requirements of Probate Code § 2352 and CRC 7.1013.

(Eff. 7/01/08)

H. USE OF WARD'S ASSETS FOR SUPPORT

If a ward has a living parent or receives or is entitled to support from another source, prior Court approval must be obtained before using guardianship assets for the ward's support, maintenance, or education. (See Probate Code § 2422.) The petition must set forth the financial inability of the parent or parents or other circumstances that would justify use of the guardianship assets. Such request for Court approval may be included in the petition for appointment of guardian. An order granting such petition should be for a limited period of time, usually not in excess of six months or for a specific and limited purpose.

(Eff. 7/26/00)

I. ACCOUNTINGS

(1) Referral to Court Investigator

At the time of filing of the guardian's accounting, a Referral for Investigator's Report form (attached form PB-4005) must be submitted, attached to a copy of the accounting, for review by the Court Investigator. See also Rule 9.A. (2) on the format of accountings and on accounting compliance dates. (Eff. 7/01/08)

(2) Accounting Required at Termination Unless Waived; Accounting Compliance Dates

At termination of a guardianship of the estate, an accounting as required by CRC 7.1004, must be filed unless waived by a ward who has reached majority pursuant to Probate Code § 2627. See CRC 7.1007(a); see also Section 9.A. (2) on the form of accounting and accounting compliance dates. (Eff. 1/01/09)

J. TERMINATION OF GUARDIANSHIP OF THE PERSON

Whenever a petition to terminate a guardianship is brought, the Petitioner must complete the local form entitled Referral for Court Investigator & Questionnaire—Guardianship (attached form PB-4005) and must attach a copy of the notice of hearing and copy of the petition to the referral form for review by the Court Investigator. Individuals objecting to a Petition to Terminate Guardianship may use the local form entitled Objection to Petition to Terminate Guardianship (attached form PB-4039).

(Eff. 1/01/09)

K. TEMPORARY GUARDIANSHIPS

(1) Petition for Appointment

The petition for appointment of a temporary guardian must be filed with or after the filing of a petition for appointment of a permanent guardian. The petition must state facts establishing the urgency requiring the appointment of a temporary guardian. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed ward will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause.

(2) Prior Review of Petition

All petitions for a temporary guardianship must be presented to the Probate Examiner's office for review before presentation to the Court.

(Eff. 7/01/02)

(3) Notice

Since a petition for temporary guardianship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the 5-day-notice requirement. Petitioner must comply with the requirements of CRC 7.1012. If notice is dispensed with by the Court, the petition may be heard on an ex parte basis. Persons obtaining an ex parte order must reserve a date for reconsideration within 30 days, pursuant to Probate Code §2250(d).

(Eff. 7/01/08)

(4) Letters of Temporary Guardianship

Letters of temporary guardianship expire on the appointment of a general guardian.

(Eff. 7/26/00)

(5) Powers of Temporary Guardian

The temporary guardian has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary guardianship.

(Eff. 7/26/00)

L. REMOVAL OF GUARDIAN

Individuals requesting removal of a guardian may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Guardian (attached form PB-4041). Anyone objecting to a petition to remove the guardian may use the local form entitled Objection to Petition to Remove Guardian (attached form PB-4036).

(Eff. 1/01/08)

M. VISITATION

Individuals requesting visitation orders in guardianships may petition the Court for an order or visitation. The petitioner may use the local form titled Probate Petition for Visitation (attached form PB-4013), and the local form titled "Visitation Order (Probate)" (attached form PB-4011) with Judicial Council Form FL-341 titled "Child Custody and Visitation Order Attachment."

(Eff. 7/01/06)

N. FIXING RESIDENCE OF A WARD OUTSIDE CALIFORNIA

The residence of a ward who is under a guardianship of the person and who is a California resident may be fixed outside of California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the ward must be returned to California within four months unless a guardianship proceeding (or its equivalent) is commenced in the place of the new residence. If a ward is not returned to California, a declaration must be filed showing proof of the establishment of the guardianship (or its equivalent) in the new jurisdiction. See Probate Code § 2352. Petitioner must submit a local form entitled "Referral for Court Investigator & Questionnaire —Guardianship" (attached form PB-4005) upon the filing of a petition to fix the residence of the ward outside of California and must attach a copy of the notice of hearing and a copy of the petition to the referral form for review by the Court Investigator.

(Eff. 1/01/07)

RULE 13
GUARDIAN AD LITEM AND COMPROMISES OF CLAIMS OF MINORS AND PERSONS WITH A DISABILITY

A. GUARDIAN AD LITEM

A guardian ad litem has no authority to accept funds on behalf of a minor or person with a disability.

(Eff. 7/01/05)

B. WHERE PETITIONS ARE PRESENTED

Unless otherwise ordered by the Court, all claims of minors and persons with a disability, both where an action is pending and

where no action is pending, must be heard by the judge assigned to hear compromises of claims of minors and persons with a disability.

(Eff. 7/01/05)

C. CONTENTS OF PETITION

The petition to compromise a minor's claim must contain, in addition to those matters required by statute and by CRC 7.950 to 7.955, the names and addresses of the minor's parents.

(Eff. 1/01/04)

Where the minor's settlement is part of a larger settlement, the petition must state in detail the factual basis for the proposed allocation to the minor or the person with a disability.

(Eff. 7/01/05)

For personal injury claims of minors and persons with a disability, unless waived by the Court, the petition must have attached a current medical report (prepared within 4 weeks of the date of the petition) that gives a diagnosis and a prognosis of the condition of the individual. The report must be prepared by a licensed physician who has treated the minor or person with a disability. It is not permissible to substitute the medical records of the minor or the person with a disability for this report.

(Eff. 7/01/05)

D. PRESENCE OF MINOR OR PERSON WITH A DISABILITY

Unless excused by the Court, the minor or person with a disability, the petitioner, and at least one of the minor's parents or guardians must be present at the hearing.

(Eff. 7/01/05)

E. EX PARTE PETITIONS

In certain circumstances, in the Court's sole discretion, petitions may be presented ex parte. These cases are only those in which the net settlement to the minor or person with a disability, after deduction of attorney fees and costs, is less than $5,000.

(Eff. 7/01/05)

F. ATTORNEY FEES

In any matter involving Court approval of the claim of a minor or a person with a disability for property damage, personal injury and/or wrongful death, the Court must allow the attorney a fee not in excess of 25% of the net amount received for the minor (total recovery less costs incurred by the attorney), unless the attorney by declaration establishes good cause for the Court, in the exercise of its discretion, to allow a larger fee.

(Eff. 7/01/05)

G. MEDICAL MALPRACTICE MATTERS

Medical malpractice cases may justify a higher attorney fee than that commonly awarded in compromises of claims of minors or persons with a disability. The Court will, in an appropriate case, award the maximum fee permissible under Business and Professions Code § 6146. The fee contract must be disclosed to the Court upon request.

(Eff. 7/01/05)

H. DISTRIBUTION

Upon approval of the petition to compromise, the judge must direct whether the funds are to be paid to a parent, to a blocked account, to a guardian or conservator of the estate, or to some other appropriate fiduciary. When deposit in a blocked account is ordered, parties must use the Judicial Council forms referred to in section 4.E above.

It is the responsibility of the fiduciary to file a Receipt for the blocked account, signed by an officer of the financial institution accepting the deposit, within 15 days of the date of deposit. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court within 45 days of the order, stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

I. FUNDS IN BLOCKED ACCOUNT IN NON-GUARDIANSHIP CASES

A request for withdrawal of funds for the minor's support, maintenance, or education may be made ex parte if accompanied by a sufficient showing of need. However, where the minor has a living parent or the minor receives or is entitled to support from

another source, the petition must contain the allegations referred to in Section 12.F above. In such cases the Court may require that the matter be set for noticed hearing. A petition for withdrawal of funds must be made on Judicial Council form "Petition For Withdrawal of Funds From Blocked Account (form number MC 357), and the petitioner must submit for the Court's signature the Judicial Council form "Order For Withdrawal of Funds From Blocked Account" (form number MC 358).

Where there is no prior Court record of the minor's date of birth, a petition to release funds from the blocked account upon the minor's majority must be accompanied with a copy of the minor's birth certificate.

J. TRANSFER OF FUNDS OF A MINOR OR A PERSON WITH A DISABILITY TO A TRUST

When it is proposed to put the funds of a minor or person with a disability in a trust, including a special needs trust, the petition should provide detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust. In addition, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and period accountings to the Court. The proposed trust should be attached to the petition as an exhibit.

(Eff. 7/01/05)

The trustee must file the trust, the court order approving establishment of the trust, and the trustee's bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust may be filed as a confidential document by attaching 2 copies of the Confidential Document Cover Sheet. (See attached form PB-4003.)

(Eff. 7/01/06)

RULE 14
COMPENSATION OF REFEREES

The compensation of the referee must be subject to Probate Court authorization or approval.

RULE 15
MINOR'S EMANCIPATION

A. DEPARTMENT

All petitions for minor's emancipations are heard in the Probate Department of the Superior Court.

(Eff. 7/01/02)

B. INVESTIGATION

An investigation into the circumstances surrounding the minor's request for emancipation will be conducted by the Court Investigator, who will prepare a written report for the Court.

(Eff. 7/01/02)

C. REPRESENTATION

Where the minor is unrepresented, he/she must have the petition and accompanying documents reviewed by an attorney. Written verification that the minor has met with an attorney must be submitted to the Court when the petition is filed.

(Eff. 7/01/02)

D. STATEMENT

The minor is to submit to the Court, with his/her petition, a personal statement, under penalty of perjury, specifying in detail the reasons for the emancipation request and describing the circumstances giving rise to the request.

(Eff. 7/01/02)

E. APPEARANCE

The minor must attend the hearing on the petition, and anyone who desires to be heard on the emancipation petition may attend. The hearing is to be nonadversarial.

(Eff. 7/01/02)

RULE 16
REMOVAL OF TRUSTEE

Individuals requesting removal of a trustee may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Trustee (attached form PB-4034). Anyone objecting to a petition to remove the trustee may use the

local form entitled Objection to Petition to Remove Trustee (attached form PB-4038).

(Eff. 1/01/08)

RULE 17
NAME CHANGE

A. DEPARTMENT

All petitions for name changes are heard in the Probate Department of the Superior Court.

(Eff. 7/01/02)

B. AGE OF MINOR

The age of the minor who is the subject of a name petition must be stated in the petition.

(Eff. 7/01/02)

C. WRITTEN CONSENT

A minor, 12 years of age or older, who is the subject of a name change petition, must give written consent to the name change and must be present in Court on the date of the hearing to be questioned by the Court.

(Eff. 7/01/02)

ATTACHMENTS

ATTACHMENT PB-4000	Listing of Newspapers of General Circulation
ATTACHMENT PB-4002	Referral for Court Investigator—Conservatorship
ATTACHMENT PB-4003-1	Confidential Document Cover Sheet—Conservatorship
ATTACHMENT PB-4003-2	Confidential Document Cover Sheet—Guardianship
ATTACHMENT PB-4003-3	Confidential Document Cover Sheet—Trust
ATTACHMENT PB-4005	Referral for Court Investigator & Questionnaire—Guardianship
ATTACHMENT PB-4011	Visitation Order (Probate)
ATTACHMENT PB-4013	Probate Petition for Visitation
ATTACHMENT PB-4014	Authorization for Release of Information
ATTACHMENT PB-4015	Capacity Declaration—Conservatorship of the Estate Attachment
ATTACHMENT PB-4016	Layperson's Declaration Re Legal Capacity
ATTACHMENT PB-4034	Petition to Remove Trustee
ATTACHMENT PB-4035	Objection to Petition to Remove Conservator
ATTACHMENT PB-4036	Objection to Petition to Remove Guardian
ATTACHMENT PB-4037	Objection to Petition to Remove Personal Representative
ATTACHMENT PB-4038	Objection to Petition to Remove Trustee
ATTACHMENT PB-4039	Objection to Petition to Terminate Guardianship
ATTACHMENT PB-4040	Petition to Remove Conservator
ATTACHMENT PB-4041	Petition to Remove Guardian
ATTACHMENT PB-4042	Petition to Remove Personal Representative
ATTACHMENT PB-4043	Objection to Guardianship
ATTACHMENT PB-4045	Objection

ATTACHMENT PB-4000
LISTING OF NEWSPAPERS OF GENERAL CIRCULATION



SANTA CLARA SUPERIOR COURT RULES

The following list is not intended to be an exclusive listing of newspapers of general circulation.

Newspaper	Phone No.	Fax No.	Publishes	Pickup	Est. Fees
CAMPBELL EXPRESS Campbell	408-374-9700 Deadline: Friday by 5:00 p.m.	408-374-0813	Wednesday	No	$185.00
CUPERTINO COURIER Cupertino	408-200-1024 Deadline: Friday at 12:00 noon E-mail: legalads@SVCN.com	408-200-1010	Wednesday	No	$327.00
GILROY DISPATCH Gilroy San Martin	408-842-6400 Deadline for Tues.: Thurs. at 2:00 p.m. Deadline for Fri.: Tues. at 2:00 p.m. E-mail: legals@svnewspapers.com	408-842-3817	Tues./Fri.	No	$300.00
LOS ALTOS TOWN CRIER Los Altos Los Altos Hills	650-948-9000 Deadline: Thursday at 12 noon (unless holiday Friday or Monday)	650-948-9213	Wednesday	No	$300-$325
LOS GATOS WEEKLY TIMES Los Gatos Monte Sereno	408-200-1024 Deadline: Friday at 12:00 noon E-mail: legalads@SVCN.com	408-200-1010	Wednesday	No	$327.00
MILPITAS POST Milpitas	408-262-2454 x23 Deadline: Wednesday at 5:00 p.m. (8 days) prior	408-263-9710	Thursday	No	$331.00
MORGAN HILL TIMES Morgan Hill San Martin Coyote	408-842-6400 Deadline for Tues.: Thurs. at 2:00 p.m. Deadline for Fri.: Tues. at 2:00 p.m. E-mail: legals@svnewspapers.com	408-842-3817	Tues./Fri.	No	$300.00
MOUNTAIN VIEW VOICE Mountain View	650-326-8210 x239 Deadline: Friday (1 week) prior	650-326-3928	Friday	No	$441.00
PALO ALTO WEEKLY Palo Alto	650-326-8210 x239 Deadline: Tues. at 12:00 noon	650-326-3928	Friday	No	$441.00
SAN JOSE CITY TIMES San Jose	408-200-1024 Deadline: Friday at 12:00 noon E-mail: legalads@SVCN.com	408-200-1010	Wednesday	No	$117.00
SAN JOSE POST-RECORD Mountain View San Jose	408-287-4866 Deadline: 3 days prior E-mail: fay_locsin@dailyjournal.com	408-287-2544	Tues./Wed./Fri.	Yes	$145.00
SANTA CLARA WEEKLY Santa Clara	408-243-2000 Deadline: Friday E-mail: scweekly@ix.netcom.com	408-243-1408	Wednesday	No	$350.00
SARATOGA NEWS Saratoga	408-200-1024 Deadline: Friday at 12:00 noon E-mail: legalads@SVCN.com	408-200-1010	Wednesday	No	$327.00
SUNNYVALE SUN Sunnyvale	408-200-1024 Deadline: Friday at 12:00 noon E-mail: legalads@SVCN.com	408-200-1010	Wednesday	No	$327.00

Eff. 1/01/10

ATTACHMENT PB-4000

ATTACHMENT PB-4002
REFERRAL FOR COURT INVESTIGATOR—CONSERVATORSHIP

Print

ATTACHMENT PB-4002

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*: TELEPHONE NUMBER: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
Conservatorship of *(Name)*: ☐ Person ☐ Estate ☐ Limited	Temp Hrg Date: Perm Hrg. Date:
REFERRAL FOR COURT INVESTIGATOR - CONSERVATORSHIP	CASE NUMBER:

Note: A fee may be assessed for Court Investigator Services – See Probate Code § 1851.5

This Referral is being sent to the Probate Investigator's Office for an investigation regarding (check all that apply):

☐ Appointment ☐ Accounting/Review ☐ Termination
☐ Medical Powers ☐ Dementia Powers ☐ Other: (specify): _____
☐ Sale of (former) Residence ☐ Substituted Judgment

Information about the (Proposed) CONSERVATEE

- **(Proposed) Conservatee's CURRENT address:**
  Address: _____
  Phone number: _____
- **(Proposed) Conservatee's HOME address:**
  Address: _____
  Phone number: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Marital Status**: ☐ Single/Divorced ☐ Widowed ☐ Married ☐ Registered Domestic Partner
- **Special needs** (i.e. language)? _____
- **Is (proposed) conservatee under an LPS Conservatorship now**? ☐ Yes ☐ No
  If yes, LPS # _____

- **(Proposed) Conservatee's Attorney** (name): _____
  Address: _____
  Phone number: _____ Fax number: _____

Print

ATTACHMENT PB-4002

Conservatorship of *(Name)*:	Case Number: General Hearing Date:

Information about the (Proposed) CONSERVATOR

All proposed Conservators must complete the information on this page. If there is more than one proposed Conservator, attach a copy of this page for each person.

- **Name**: _____
- **Relationship to Conservatee**: ☐ Spouse ☐ Son/Daughter ☐ Registered Domestic Partner
  ☐ Other (describe): _____
- **Home Address**: _____
- **Home phone**: _____ **Fax number**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____
- **Work phone**: _____ **Cell phone**: _____
- **(Proposed) Conservator's Attorney** (name)**:** _____
  Address: _____
  Phone number: _____ Fax number: _____

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

Date: _____ _____
Signature of Proposed Conservator

☐ Information sheet(s) for (number) _____ of (proposed) co-conservators is attached.

Print

Conservatorship of *(Name)*:	Case Number: General Hearing Date:

Information about (Proposed) Conservatee's Relatives & Friends

List the spouse or registered domestic partner, 1st and 2nd degree relatives (these are parents, children, brothers/sisters, grandparents and grandchildren), neighbors and close friends of the (proposed) conservatee.

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

Print

Conservatorship of *(Name)*:	Case Number: General Hearing Date:

Information about (Proposed) Conservatee's Relatives & Friends

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

Print

Conservatorship of *(Name)*:	Case Number: General Hearing Date:

Information about OTHER ADULTS (age18 or older) who reside with the proposed Conservatee

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** _____ **Work phone:** _____ **Cell phone:** _____

- **Name:** _____
- **Relationship to (proposed) conservatee:** _____
- **Home Address:** _____
- **Home phone:** **Work phone:** _____ **Cell phone:** _____

ATTACHMENT PB-4003-1
CONFIDENTIAL DOCUMENT COVER SHEET—CONSERVATORSHIP

Print

ATTACHMENT PB-4003-1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA	FOR COURT USE ONLY
COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 PHONE NUMBER: (408) 882-2761 FAX NUMBER: (408) 882-2797 BRANCH NAME: Downtown Courthouse – Court Investigator's Division	
IN THE MATTER OF THE ☐ Limited Conservatorship ☐ Trust ☐ Conservatorship RE:	
CONFIDENTIAL DOCUMENT COVER SHEET (Conservatorship)	CASE NUMBER:

RE: CONSERVATORSHIP:

The following documents shall be made available only to parties, persons given notice of the petition who have requested the document or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the document, if it would serve the interests of the conservatee.

- ☐ **Probate Code §1821:** Supplemental Information form.
- ☐ **Cal. Rules of Court, Rule 7.1050:** Confidential Conservator Screening Form.
- ☐ **Probate Code §2250.6:** Court Investigator's temporary appointment report.
- ☐ **Probate Code §2250.6:** Court Investigator's ex-parte temporary appointment report.
- ☐ **Probate Code §1826:** Court Investigator's appointment report.
- ☐ **Probate Code §1850(a):** Court Investigator's report six months after initial appointment of conservator.
- ☐ **Probate Code §1850(a)(2):** Court Investigator's first year review report with an accounting.
- ☐ **Probate Code §1850(a)(2):** Court Investigator's first year review report without an accounting.
- ☐ **Probate Code §1851:** Court Investigator's biennial review report with accounting.
- ☐ **Probate Code §1851:** Court Investigator's biennial review report without an accounting.
- ☐ **Probate Code §1850(a)(2):** Court Investigator's 12 month status report.
- ☐ **Probate Code §1850(b):** Court Investigator's report requested by court order.
- ☐ **Probate Code §2355:** Court Investigator's report regarding medical consent authority.
- ☐ **Probate Code §2356.5:** Court Investigator's report regarding dementia authority.
- ☐ **Probate Code §2540:** Court Investigator's report regarding sale of personal residence.
- ☐ **Probate Code §1827.5:** Ltd. Conservatorship: Regional Center assessment.
- ☐ **Probate Code §1850.5:** Ltd. Conservatorship Court Investigator's appointment report.
- ☐ **Probate Code §1850.5:** Ltd. Conservatorship first year Court Investigator's review report.
- ☐ **Probate Code §1850.5:** Ltd. Conservatorship Court Investigator's biennial report.
- ☐ **COMPETING PETITION REPORT**
- ☐ **Other:**

ATTACHMENT PB-4003-2
CONFIDENTIAL DOCUMENT COVER SHEET—GUARDIANSHIP

Print

ATTACHMENT PB-4003-2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA	FOR COURT USE ONLY
COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 PHONE NUMBER: (408) 882-2761 FAX NUMBER: (408) 882-2797 BRANCH NAME: Downtown Courthouse – Court Investigator's Division	
IN THE MATTER OF GUARDIANSHIP OF:	
CONFIDENTIAL DOCUMENT COVER SHEET (Guardianship)	CASE NUMBER:

RE: GUARDIANSHIPS:

The following documents are confidential and shall be made available only to persons who have been served in the proceedings and/or their attorneys.

☐ **Cal. Rules of Court, Rule 7.1001**: Confidential Guardianship Screening Form

☐ **Probate Code §1513**: Court Investigator/Family Court Services/Social Services Agency report for appointment of Guardian.

☐ **Probate Code §1513.2:** Confidential Guardianship Status report.

☐ **Review of Existing Guardianship Reports**

☐ **Other:**

ATTACHMENT PB-4003-3
CONFIDENTIAL DOCUMENT COVER SHEET – TRUST

Print

ATTACHMENT PB-4003-3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA	FOR COURT USE ONLY
COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 PHONE NUMBER: (408) 882-2761 FAX NUMBER: (408) 882-2797 BRANCH NAME: Downtown Courthouse – Court Investigator's Division	
IN THE MATTER OF THE ☐ Guardianship ☐ Limited Conservatorship ☐ Conservatorship ☐ Trust RE:	
CONFIDENTIAL DOCUMENT COVER SHEET (Trust)	CASE NUMBER:

RE: ESTATE PLANNING DOCUMENTS:

The following estate planning documents shall be made available only to persons who have applied to the court and have been granted permission to review the documents.

☐ **Estate Planning Documents:**

ATTACHMENT PB-4005
REFERRAL FOR COURT INVESTIGATOR & QUESTIONNAIRE—GUARDIANSHIP

Print

ATTACHMENT PB-4005

For Court use only:

Temp hrg date: _____

Perm hrg date: _____

REFERRAL FOR COURT INVESTIGATOR & QUESTIONNAIRE - GUARDIANSHIP

Case number (if you have one): _____

Guardianship of (name): _____ ☐ Person ☐ Estate

- **Do you think anyone will disagree with the guardianship?** ☐ Yes ☐ No
  If yes, who? Name: _____ Telephone number: _____
- **Has Child Protective Services (CPS) ever been called about the child(ren) in this case?** ☐ Yes ☐ No
  If yes, which County: ☐ Santa Clara ☐ Other (County name): _____
- **Are there any custody orders about the child(ren) in this case?** ☐ Yes ☐ No
  If yes, which County: ☐ Santa Clara ☐ Other (County name): _____

Information about the CHILD(REN) -

- **Child ❶ Name:** _____
- **Birth Date**: _____
- **Social Security number**: _____
- **School, Grade, School Telephone number**: _____

- **Child ❷ Name:** _____
- **Birth Date**: _____
- **Social Security number**: _____
- **School, Grade, School Telephone number**: _____

- **Child ❸ Name:** _____
- **Birth Date**: _____
- **Social Security number**: _____
- **School, Grade, School Telephone number**: _____

☐ Check if there are more children in the case add information about them on another page.

CONFIDENTIAL – DO NOT PUT IN COURT FILE

Print

Information about the PROPOSED GUARDIANS'S ATTORNEY -

☐ Proposed Guardian doesn't have an attorney

Name: _____

Address: _____

Phone number: _____ **Fax number**: _____

Information about the PROPOSED GUARDIAN(S) –

Proposed Guardian ❶:

- **Name**: _____
- **Relationship to child(ren)**: ☐ Grandparent ☐ Aunt/Uncle ☐ Other: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____
- **Home Address**: _____
- **Home Phone number**: _____ **Cellphone number**: _____
- **Work Address**: _____
- **Work Phone number**: _____ **Fax number**: _____

Proposed Guardian ❷:

- **Name**: _____
- **Relationship to child(ren)**: ☐ Grandparent ☐ Aunt/Uncle ☐ Other: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____
- **Home Address**: _____
- **Home Phone number**: _____ **Cellphone number**: _____
- **Work Address**: _____
- **Work Phone number**: _____ **Fax number**: _____

All proposed Guardians must answer these questions:

1. **Have you ever been convicted of a misdemeanor or felony offense**? ☐ Yes ☐ No

If yes, what offense(s): _____ Date: _____ County: _____

2. **Is there a social worker, probation or parole officer supervising you or ANY person who lives with you**?
☐ Yes ☐ No

If yes, explain: _____

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Print

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

Date: _____ Proposed Guardian 1 signs here: _____

Date: _____ Proposed Guardian 2 signs here: _____

Information about OTHER ADULTS (age 18 or older) WHO LIVE IN YOUR HOME –

- **Name**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____ **State:** _____

- **Name**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____ **State:** _____

- **Name**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____ **State:** _____

- **Name**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____ **State:** _____

- **Name**: _____
- **Birth Date**: _____
- **Social Security number**: _____
- **Driver's License number**: _____ **State:** _____

CONFIDENTIAL – DO NOT PUT IN COURT FILE

Print

☐ More adults live in my home. I've attached information about them on a separate page.

ATTACHMENT PB-4011
VISITATION ORDER (PROBATE)

Print

ATTORNEY OR PARTY WITHOUT AN ATTORNEY (Name, State bar number, and address)	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA PROBATE DIVISION 191 NORTH FIRST STREET SAN JOSE, CA 95113	
GUARDIANSHIP OF: MINOR	
VISITATION ORDER	CASE NUMBER

1. The petition to grant visitation came on for hearing as follows *(check boxes c, d, e, f, g, h to indicate personal presence)*:
   a. Judge *(name)*:
   b. Hearing date: Time: Dept:
   c. ☐ Petitioner *(name)*:
   d. ☐ Attorney for petitioner *(name)*:
   e. ☐ Minor:
   f. ☐ Attorney for minor *(name)*:
   g. ☐ Guardian(s):
   h. ☐ Attorney for guardian(s):
   i. ☐ Other(s):

THE COURT FINDS

2. a. All notices required by law have been given
   b. ☐ Notice of hearing to the following persons ☐ has been ☐ should be dispensed with *(names)*:
   c. Visitation by the petitioner is in the best interest of the child.

THE COURT ORDERS

3. ☐ Parties are ordered to orientation and mediation at Family Court Services (408 5345760 to determine a visitation schedule.
   a. ☐ Parties are ordered to appear for a review hearing:
   Date: Time: Dept:
4. ☐ Parties are ordered to follow the attached visitation schedule.
5. ☐ Other *(specify)*:

Date:

_____
JUDGE OF THE SUPERIOR COURT

ATTACHMENT PB-4013
PETITION FOR VISITATION (PROBATE)

Print

ATTORNEY OR PARTY WITHOUT AN ATTORNEY (Name, State bar number, and address)	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA PROBATE DIVISION 191 NORTH FIRST STREET SAN JOSE, CA 95113	
GUARDIANSHIP OF: MINOR	
PETITION FOR VISITATION	CASE NUMBER

1. **Petitioner** *(name)*: **requests**

   the following specific visitation schedule for the minor *(name)*:

2. Petitioner is the minor's ☐ parent ☐ grandparent ☐ other:

3. ☐ *Name(s)*: was appointed guardian of the PERSON on *(date):*

4. Petitioner should be granted visitation for the reasons ☐ specified below ☐ specified in Attachment 4.

5. ☐ Notice to the persons identified in Attachment 5 should be dispensed with because

   ☐ they cannot with reasonable diligence be given notice *(specify names and efforts to locate them in Attachment 5).*

   ☐ other good cause exists to dispense with notice *(specify names and reasons in Attachment 5).*

Print

GUARDIANSHIP OF THE ☐ PERSON *OF (Name)*: MINOR	CASE NUMBER:

6. The names and residence addresses of the guardian, minor, and minor's parents, brothers, sisters and grandparents are as follows:

   a. Guardian:

   b. Minor:

   c. Father:

   d. Mother:

   e. Brother(s) or Sister(s): (12 years old or older)

   f. Maternal grandfather:

   g. Maternal grandmother:

   h. Paternal grandfather:

   i. Paternal grandmother:

   j. ☐ Additional names and addresses continued in Attachment 6.

7. Number of pages attached: _____

Date:

▶ _____
(SIGNATURE OF ATTORNEY)

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

Date:

..... ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

..... ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Consent to Visitation and Waiver of Notice

I consent to the attached visitation schedule and waive notice of the petition:

_____ ..... _____
(DATE) (TYPE OR PRINT NAME) (SIGNATURE OF GUARDIAN)

_____ ..... _____
(DATE) (TYPE OR PRINT NAME) (SIGNATURE OF GUARDIAN)

I consent to attend orientation and mediation and waive notice of the petition:

_____ ..... _____
(DATE) (TYPE OR PRINT NAME) (SIGNATURE OF GUARDIAN)

_____ ..... _____
(DATE) (TYPE OR PRINT NAME) (SIGNATURE OF GUARDIAN)

ATTACHMENT PB-4014
AUTHORIZATION FOR RELEASE OF INFORMATION

Print

ATTACHMENT PB-4014

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA	FOR COURT USE ONLY
COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 PHONE NUMBER: (408) 882-2761 FAX NUMBER: (408) 882-2797 BRANCH NAME: Downtown Courthouse – Court Investigator's Division	
IN THE MATTER OF GUARDIANSHIP OF:	
AUTHORIZATION FOR RELEASE OF INFORMATION	CASE NUMBER:

Probate Code Section 1513 requires that a probate court investigator conduct interviews and write a report and recommendation to the Court concerning the appropriateness of establishing a guardianship for the above-named child(ren). In order to assist in the gathering of pertinent information,

I/we, _____/_____

specifically authorize the release of school records, counseling records, probation records, public and private social service records, summaries of medical and psychological records, and records from any private or public agency which would assist in determination of our petition for guardianship.

Dated:_____ _____

Dated:_____ _____

Original to: Probate Court Investigator

ATTACHMENT PB-4015
CAPACITY DECLARATION—CONSERVATORSHIP OF THE ESTATE ATTACHMENT

Print

Conservatorship of the ☐ Person ☐ Estate of *(Name)* ☐ Conservatee ☐ Proposed Conservatee	Case Number

PROFESSIONAL DECLARANT'S ATTACHMENT TO FORM GC-335

☐ **ABILITY TO ENTER INTO FINANCIAL TRANSACTIONS**

1. Based on the information on pages 1-3 of this declaration, it is my opinion that the (proposed) conservatee
   a. ☐ has the capacity to enter into financial transactions and should not have his or her right to enter into contracts terminated by the Court.
   b. ☐ lacks the capacity to enter into financial transactions because the mental deficits indicated above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of his or her actions such that the (proposed) conservatee lacks the capacity to understand and/or enter into any contracts or agreements regarding property. ***(If this paragraph applies, declarant shall initial here:*** _____.)

2. Additional Comments:

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

Date:

. . . . . ▸ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Print

Instructions to Counsel and Declarants
For Completing GC-335, GC-335A, and Conservatorship of Estate Attachments PB-4015 and PB-4016

Attachments PB-4015 ~~and~~ **or** PB-4016 shall be used where the petitioner is seeking conservator of the estate powers. Petitioners shall use Attachment PB-4015 when they request a medical or psychological professional to complete Judicial Council Form GC-335. Petitioners shall use Attachment PB-4016 for conservatorships of the estate when no orders regarding inability to attend the hearing, medical consent powers, or dementia powers are being sought and where petitioners wish to have a lay person complete a capacity declaration.

(1) For nonattendance of proposed conservatee at appointment hearing: Use page one only of Form GC-335. Complete items 1-5. A lay person cannot complete form GC-335.

(2) To support a petition for appointment of conservator of estate:

When a medical or psychological professional is used as a declarant, the declarant must complete pages one to three of GC-335 and attach the Conservatorship of the Estate Attachment (Attachment PB-4015). The declarant should sign the declaration on page three and should sign the Conservatorship of the Estate Attachment. Declarant must initial on the line in item 1 of the Conservatorship of the Estate Attachment. Complete items 1-4 and item 6 of form GC-335. If proposed conservatee is not to be excused from attendance, leave item 5 blank.

When a lay person is used as a declarant, the declarant must complete pages one to three of Attachment PB-4016. A lay person cannot complete form GC-335.

(3) To support a petition for appointment of conservator of person with medical powers; or for a subsequent grant of medical powers to a conservator of the person: Use pages one to three of Form GC-335. Declarant should sign the declaration on page three only. Complete items 1-4 and 6 and 7. Declarant must initial on the line in item 7b. If proposed conservatee is not to be excused from attendance, leave item 5 blank. A lay person cannot complete form GC-335.

(4) To support a petition for grant of dementia powers pursuant to Probate Code Section 2356.5, either at time of initial appointment or for a subsequent grant of dementia powers: Complete pages 1 through 3 of declaration GC-335 and complete GC335A. Declarant should sign the declaration Form GC 335A only. Use items 1-4, 6, 7, and 9. If the proposed conservatee is not to be excused from attendance, leave item 5 blank. A lay person cannot complete form GC-335.

Please note the following restrictions in the law governing who is authorized to prepare the different portions of this declaration:

(1) Nonattendance at Hearing: May be executed only by a licensed medical practitioner, including a psychologist acting in the scope of his/her licensure, and including an accredited religious healing practitioner.

(2) Establishment of Conservatorship of Estate: May be executed by anyone with knowledge of the circumstances of the proposed conservatee. A layperson cannot complete form GC-335 but can complete Local Form "Lay person's Declaration Re Legal Capacity," Attachment PB-4016.

Print

(3) For grant of medical powers: May be executed by a licensed physician or a licensed psychologist acting within the scope or his/her licensure.

(4) For grant of dementia powers under Probate Code Section 2356.5: May be executed by a licensed physician or a licensed psychologist acting within the scope of his/her licensure and who has at least two years experience in diagnosing dementia.

To the person preparing the Capacity Declaration form prior to sending it to declarant:

(1) Complete the box on page one that indicates for what purpose(s) you are having this form completed and indicate in the space provided on page one, which pages of this multipurpose declaration you are filing. If you are completing page one only, you should not file pages two and three. If you are completing pages one to three only, you should not file Form GC-335A.

(2) Judicial Council form GC-335 contains two declaration clauses, and GC-335A contains a declaration clause. The Conservatorship of the Estate Attachment and the Lay Person's Declaration re Legal Capacity also contain declaration clauses. Prior to sending it to declarant, strike out the declaration clauses to be left blank. For example, if you are seeking medical powers as well as a finding that the conservatee should be excused because of medical inability from attending the hearing, strike out the declaration clause on page one. If you are seeking dementia powers, strike out the declaration clauses on pages one and three.

(3) Special instructions for Item 9, Form GC-335A: Declarant should refer to special mental function deficits as noted in item 6, relevant to the need for secure placement or need for administration of dementia medications, when completing item 9a1 and 9b1. Declarant should describe specific medical or behavior problems in items 9a and 9b that secure placement or administration of dementia medications will address.

Print

ATTACHMENT PB-4016

Attorney or Party without Attorney (Name, state bar number and address): *Telephone and Fax No.:*	*FOR COURT USE ONLY*
Attorney for (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA 191 North First Street San Jose, California 95113	
Conservatorship of the ☐ Person ☐ Estate of ☐ Conservatee ☐ Proposed Conservatee	
LAYPERSON'S DECLARATION RE LEGAL CAPACITY	CASE NUMBER:

TO LAYPERSON DECLARANT

The purpose of this form is to enable the court to determine whether the (proposed) conservatee has the capacity to enter into financial transactions.

GENERAL INFORMATION

1. *(Name)*:

2. *(Address and telephone number)*:

3. I am a layperson. I know the (proposed) conservatee in the following capacity *(describe)*: _____

4. ☐ (Proposed) Conservatee:
   I last saw the (proposed) conservatee on *(date)*:

(Continued on next page)

Print

Conservatorship of the ☐ Person ☐ Estate of *(Name)*: ☐ Conservatee ☐ Proposed Conservatee	Case Number:

☐ **EVALUATION OF (PROPOSED) CONSERVATEE'S MENTAL FUNCTION.**

5. **Note to the Declarant:** This form is ***not*** a rating scale. It is intended to assist you in recording your *impressions* of the (proposed) conservatee's mental abilities. Where appropriate, please feel free to refer to scores on standardized rating instruments.
Instructions (Items A-C): Check the appropriate designation below: ***a*** = no apparent impairment; ***b*** = moderate impairment; ***c*** = major impairment; ***d*** = so impaired as to be incapable of being assessed; ***e*** = I have no opinion.

A. **Alertness and Attention**
(1) **Levels of arousal.** (Lethargic, responds only to vigorous and persistent stimulation, stupor.)
a ☐ b ☐ c ☐ d ☐ e ☐
(2) **Orientation.** Encircle each *type of orientation* which is impaired:
a ☐ b ☐ c ☐ d ☐ e ☐ Person
a ☐ b ☐ c ☐ d ☐ e ☐ Time [day, date, month, season, year]
a ☐ b ☐ c ☐ d ☐ e ☐ Place [address, town, state]
a ☐ b ☐ c ☐ d ☐ e ☐ Situation [why am I here?]
(3) **Ability to attend and concentrate.** (Give detailed answers from memory, mental ability required to thread a needle.)
a ☐ b ☐ c ☐ d ☐ e ☐

B. **Information Processing.** Ability to:
(1) **Remember.** (Ability to remember question before answering, to recall names, relatives, past presidents, events of past 24 hours.)
i. **Short-term memory:**
a ☐ b ☐ c ☐ d ☐ e ☐
ii. **Long-term memory:**
a ☐ b ☐ c ☐ d ☐ e ☐
iii. **Immediate recall:**
a ☐ b ☐ c ☐ d ☐ e ☐
(2) **Understand and communicate either verbally or otherwise.** (Deficits reflected by: inability to comprehend questions, follow instructions, use words correctly or name objects; nonsense words.)
a ☐ b ☐ c ☐ d ☐ e ☐
(3) **Recognize familiar objects and persons.** (Deficits reflected by: inability to recognize familiar faces, objects, etc.)
a ☐ b ☐ c ☐ d ☐ e ☐
(4) **Understand and appreciate quantities.** (Perform simple calculations.)
a ☐ b ☐ c ☐ d ☐ e ☐
(5) **Reason using abstract concepts.** (Grasp abstract aspects of his/her situation; interpret idiomatic expressions or proverbs.)
a ☐ b ☐ c ☐ d ☐ e ☐
(6) **Plan, organize and carry out actions (assuming physical ability) in one's own rational self interest.** (Break complex tasks down into simple steps and carry them out.)
a ☐ b ☐ c ☐ d ☐ e ☐
(7) **Reason logically.**
a ☐ b ☐ c ☐ d ☐ e ☐

C. **Thought disorders.**
(1) **Severely disorganized thinking.** (Rambling thoughts, nonsensical, incoherent or non-linear thinking.)
a ☐ b ☐ c ☐ d ☐ e ☐
(2) **Hallucinations.** (Auditory, visual, olfactory.)
a ☐ b ☐ c ☐ d ☐ e ☐
(3) **Delusions.** (Demonstrably false belief maintained without or against reason or evidence.)
a ☐ b ☐ c ☐ d ☐ e ☐
(4) **Uncontrollable or intrusive thoughts.** (Unwanted compulsive thoughts, compulsive behavior.)
a ☐ b ☐ c ☐ d ☐ e ☐

(Continued on next page)

Print

Conservatorship of the ☐ Person ☐ Estate of *(Name)* ☐ Conservatee ☐ Proposed Conservatee	Case Number

D. **Ability to modulate mood and affect.** The (proposed) conservatee ☐ has ☐ does NOT have a pervasive and persistent or recurrent emotional state that appears inappropriate in degree to his or her circumstances. *(If so, complete remainder of 5D.)*

☐ I have no opinion.

Instructions: Rate the *degree* of impairment of each *inappropriate* mood state *(if any)* as follows:
a = mildly inappropriate; **b** = moderately inappropriate; **c** = severely inappropriate

Anger a ☐ b ☐ c ☐	Euphoria a ☐ b ☐ c ☐	Helplessness a ☐ b ☐ c ☐
Anxiety a ☐ b ☐ c ☐	Depression a ☐ b ☐ c ☐	Apathy a ☐ b ☐ c ☐
Fear a ☐ b ☐ c ☐	Hopelessness a ☐ b ☐ c ☐	Indifference a ☐ b ☐ c ☐
Panic a ☐ b ☐ c ☐	Despair a ☐ b ☐ c ☐	

E. The (proposed) conservatee's periods of impairment from the deficits indicated in Items 5A-5D
(1) ☐ do NOT vary substantially in frequency, severity, or duration.
(2) ☐ do vary substantially in frequency, severity, or duration *(explain)*:

F. ☐ *(Optional)* Other information regarding my evaluation of the (proposed) conservatee's mental function (e.g., particular observations, problems noticed):

☐ Stated in Attachment 5F.

☐ **ABILITY TO ENTER INTO FINANCIAL TRANSACTIONS.**

6. Based on the information above, it is my opinion that the (proposed) conservatee
a. ☐ has the capacity to enter into financial transactions and should not have his or her right to enter into contracts terminated by the Court.
b. ☐ lacks the capacity to enter into financial transactions because the mental deficits indicated above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of his or her actions such that the (proposed) conservatee lacks the capacity to understand and/or enter into any contracts or agreements regarding property. ***(If this paragraph applies, declarant shall initial here: _____.)***

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

Date:

..... ▸ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

LAYPERSON'S DECLARATION RE LEGAL CAPACITY

ATTACHMENT PB-4034
PETITION TO REMOVE TRUSTEE

Print

ATTACHMENT PB-4034

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
IN RE *(name of trust)*:	
PETITION TO REMOVE TRUSTEE	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Beneficiary ☐ Settlor ☐ Other: _____

I am petitioning to remove *(name)* _____as trustee

of the estate of the *(name of trust)* _____ for the

following reasons:

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4034

IN RE *(name of trust)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

Date Signed	Server Prints Their Name Here	Server Signs Their Name Here

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4035
OBJECTION TO PETITION TO REMOVE CONSERVATOR

Print

ATTACHMENT PB-4035

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
CONSERVATORSHIP OF *(name)*:	
OBJECTION TO PETITION TO REMOVE CONSERVATOR	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Conservator ☐ Other: _____

I object to the Petition to Remove Conservator filed by *(name)*_____

for the following reasons: _____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4035

CONSERVATORSHIP OF *(name)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	**Addresses of People Served:**
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4036
OBJECTION TO PETITION TO REMOVE GUARDIAN

Print

ATTACHMENT PB-4036

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
GUARDIANSHIP OF *(child's name)*:	
OBJECTION TO PETITION TO REMOVE GUARDIAN	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Guardian ☐ Parent ☐ Other:_____

I object to the Petition to Remove Guardian filed by *(name)*_____

for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4036

GUARDIANSHIP OF *(child's name(s))*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

Date Signed	Server Prints Their Name Here	Server Signs Their Name Here

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4037
OBJECTION TO PETITION TO REMOVE PERSONAL REPRESENTATIVE

Print

ATTACHMENT PB-4037

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
ESTATE OF *(name of deceased person)*:	
OBJECTION TO PETITION TO REMOVE PERSONAL REPRESENTATIVE	CASE NUMBER:

I, (my name)_____, declare:

I am a: ☐ Personal Representative ☐ Other:_____

I object to the Petition to Remove Personal Representative filed by

(name): _____ for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

_____	_____	_____
Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4037

ESTATE OF *(name)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____ _____ _____
Date Signed **Server Prints Their Name Here** **Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4038
OBJECTION TO PETITION TO REMOVE TRUSTEE

Print

ATTACHMENT PB-4038

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
IN RE *(name of trust)*:	
OBJECTION TO PETITION TO REMOVE TRUSTEE	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Trustee ☐ Beneficiary ☐ Settlor ☐ Other: _____

I object to the Petition to Remove Trustee filed by *(name)* _____

for the following reasons:

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4038

IN RE *(name of trust)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____	_____	_____
Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4039
OBJECTION TO PETITION TO TERMINATE GUARDIANSHIP

Print

ATTACHMENT PB-4039

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
GUARDIANSHIP OF *(child's name)*:	
OBJECTION TO PETITION TO TERMINATE GUARDIANSHIP	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Guardian ☐ Parent ☐ Other: _____

I object to the Petition to Remove Guardian filed by *(name)*_____

for the following reasons: _____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4039

GUARDIANSHIP OF *(child's name(s))*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____	_____	_____
Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4040
PETITION TO REMOVE CONSERVATOR

Print

ATTACHMENT PB-4040

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
CONSERVATORSHIP OF *(name)*:	
PETITION TO REMOVE CONSERVATOR	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Conservator ☐ Other: _____

I am petitioning to remove *(name)*_____as

conservator for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4040

CONSERVATORSHIP OF *(children's name/s)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____	_____	_____
Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4041
PETITION TO REMOVE GUARDIAN

Print

ATTACHMENT PB-4041

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
GUARDIANSHIP OF *(child's name)*:	
PETITION TO REMOVE GUARDIAN	CASE NUMBER:

I, *(my name)*_____declare;

I am a: ☐ Parent Other:_____

I am petitioning to remove *(name)*:_____ as guardian of the minor(s) in this case for the following reasons:

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4041

GUARDIANSHIP OF *(child's name(s))*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____	_____	_____
Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4042
PETITION TO REMOVE PERSONAL REPRESENTATIVE

Print

ATTACHMENT PB-4042

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
ESTATE OF *(name of deceased person)*:	
PETITION TO REMOVE PERSONAL REPRESENTATIVE	CASE NUMBER:

I, *(my name)*_____, declare:

I am a: ☐ Beneficiary ☐ Heir ☐ Other:_____

I am petitioning to remove *(name)*: _____as

personal representative of the estate of the above-named decedent for the following reasons:

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4042

ESTATE OF *(name)*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

Date Signed	Server Prints Their Name Here	Server Signs Their Name Here

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4043
OBJECTION TO GUARDIANSHIP

Print

ATTACHMENT PB-4043

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
GUARDIANSHIP OF *(name)*:	
OBJECTION TO GUARDIANSHIP	CASE NUMBER:

I am related to the child as the ☐ Mother ☐ Father ☐ Other *(describe)*: _____

I do not agree that_____ should be guardian of the child/children because:
(NAME OF PROPOSED GUARDIAN)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

_____	_____	_____
Today's date	Print your name here	Sign your name here

Print

ATTACHMENT PB-4043

GUARDIANSHIP OF *(child/ren's name(s))*:	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Petition to Remove Trustee on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

_____	_____	_____
Date Signed	**Server Prints Their Name Here**	**Server Signs Their Name Here**

I Mailed this Notice to the Following People:

Names of people served:	Addresses of People Served:
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____
Name:	Mailing Address:_____ City, State, Zip Code:_____

☐ Additional people are listed on an attachment

ATTACHMENT PB-4045
OBJECTION

Print

ATTACHMENT PB-4045

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar Number and Address)*:	*FOR COURT USE ONLY*
TELEPHONE NUMBER: FAX NUMBER *(Optional)*: EMAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA COURT ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Probate Division	
(Please Check One:) ☐ CONSERVATORSHIP OF ☐ TRUST OF ☐ ESTATE OF ☐ GUARDIANSHIP OF ☐ OTHER _____ *(Name)*:	
OBJECTION	CASE NUMBER:

I, *(my name)*: _____, declare:

I am a *(check one)*: ☐ Trustee ☐ Beneficiary ☐ Heir ☐ Conservator

☐ Other: _____

I object to _____

filed by *(name)*: _____

for the following reasons: _____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Continue to explain on a separate piece of paper and attach it to this page.

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

_____	_____	_____
Today's date	Print your name here	Sign your name here

Print

PLEASE SELECT ONE	CASE NUMBER:

PROOF OF SERVICE

1. I am over age 18 and am not a party in this case. I live or work in the county where the mailing occurred.

2. **My (the server's) home or business address is:** _____
STREET ADDRESS

_____
CITY, STATE, ZIP

3. I served the Objection on each person named below by putting a copy in a sealed envelope addressed as shown below AND

   ☐ **depositing** the envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.

   ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. **Date mailed:** _____ **Place mailed (city, state):** _____

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

Date Signed	Server Prints His/Her Name Here	Server Signs His/Her Name Here
_____	_____	_____

I Mailed this Notice to the Following People:

Names of People Served:	Addresses of People Served:
Name:	Mailing Address: _____ City, State, Zip Code: _____
Name:	Mailing Address: _____ City, State, Zip Code: _____
Name:	Mailing Address: _____ City, State, Zip Code: _____
Name:	Mailing Address: _____ City, State, Zip Code: _____

☐ Additional people are listed on an attachment

Reset Form

© The Regents of the University of California

Santa Cruz County
Probate Rules

Effective January 1, 2009

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DIVISION FOUR—PROBATE RULES

RULE 4.1
PROBATE GENERAL RULES

4.1.01 Applicability of Rules

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

(Rev. 7/1/91)

4.1.02 Appearances

Appearances are required on all petitions for appointment of conservators/guardians, confirmation of sale of real or personal property, any petition which has objections filed, and minor's compromises.

If counsel does not appear on a matter, cases which are incomplete or questionable will be continued or will be dropped from the calendar, depending on the circumstances.

(Rev. 7/1/99) (Rev. 7/1/03)

4.1.03 Probate Examiner's Office

(a) Matters appearing on the probate calendar are reviewed by the Probate Examiner three or more Court days prior to the hearing. Although there is no Approved List, counsel may call the Probate Examiner to inquire as to any procedural defects or other problems noted. The Probate Examiner may initiate contact with counsel or pro per petitioners, concerning procedural defects, either by telephone or facsimile transmissions.

(b) The Probate Examiner can be reached at 831-420-2204.

(Rev. 1/1/96) (Rev. 7/1/03) (Rev. 1/1/08) (Eff. 1/09)

4.1.04 Contested Matters

Factual issues that require an evidentiary hearing will be calendared for hearing. Contested matters of law shall be briefed for decision in the probate department. All moving and supporting papers, opposition papers and reply papers shall be filed and served pursuant to the time requirements specified in CCP § 1005(b). The Alternative Dispute Resolution Programs of the Court are available for contested probate matters. The use of ADR is encouraged by the Court.

(Rev 7/1/03) (Eff. 1/09)

4.1.04.1 Supporting Documents

All supporting documents and a proposed order must be submitted at least five (5) Court days prior to the hearing. In the event that procedural defects or other problems are noted by the Probate Examiner, documents remedying such defects must be filed by 11:00 a.m. on the day before the hearing.

(Eff. 7/1/99)(Eff. 1/09)

4.1.05 Correction of an Order

If an order has been filed, it can only be amended by Court order. Depending on the circumstances, the Court may approve an amended order upon a letter from counsel, or may require a verified petition setting forth the basis for the correction and requesting the judge to sign the amended order. Correction of an order shall be in the form of an amended order with all provisions of the original order restated.

(Rev. 7/1/91)(Rev. 7/1/99) (Renumbered 7/1/07)

4.1.06 Petitions

Except as otherwise specified herein, all petitions must be filed with the Clerk's Office at least 15 days prior to the hearing, except matters filed under Probate Code Section 2520, 9860, or 7200, et seq., which shall be filed at least 30 days prior. A Notice of Hearing on the mandatory Judicial Council form must be filed at the time of filing of the petition. Proof of Service of the Notice of Hearing must be filed not later than two court days prior to the hearing date.

(Rev. 7/1/01) (Renumbered 7/1/07)(Eff. 1/09)

4.1.07 Orders

(a) Proposed Orders: Except in the case of confirmation of sales and contested matters, counsel shall submit the order not later than the fifth Court day prior to the hearing date. Orders shall have the scheduled calendar day and time noted on the face sheet below the title of the document. The hearing date and time must be highlighted with a highlighter pen.

(b) Form of Orders: All orders must be complete. The order shall be drawn so that its substance may be determined without having to refer to the petition on which it is based. For example, all orders of distribution shall include complete legal descriptions of the property being distributed. The order shall set forth all matters actually passed on by the Court and the relief granted.

(c) Orders in Contested Matters: The attorney preparing a final order following a contested hearing must provide opposing counsel an opportunity to review and approve the proposed order as to form and content before submitting the order to the court for signature. Objections to form or content relating to the proposed order may be made by letter or in pleading form accompanied by a proposed alternative form of order.

(Rev. 7/1/01) (Renumbered 7/1/07)(Eff. 1/09)

4.1.08 Ex Parte Matters - Probate

Ex parte matters which are appropriate for submission at 1:00 P.M. Monday - Friday include petitions for special administration, petitions for appointment of temporary conservators/guardians and orders shortening time. Counsel, or the pro per petitioner, must inform the Probate Examiner in advance of their intention to submit a petition at these signings by calling the Probate Examiner one court day in advance of their intention to submit an ex parte petition. Other ex parte matters are to be submitted to the Clerk's Office. If a time urgency exists, a request to expedite the matter may be made.

(Rev. 7/1/03) (Renumbered 7/1/07)(Eff. 1/09)

4.1.09 Blocked Accounts

(a) A petition and order to place assets in a blocked account shall state that "no withdrawals shall be made without prior Court order". A receipt acknowledged by the financial institution indicating the deposit of cash into a blocked account must be filed with the Clerk's Office within ten (10) days after the date of deposit.

(b) A petition for withdrawal of funds may be submitted ex parte. The mandatory Judicial Council form must be used.

(c) Monies in blocked accounts should not exceed the limit of Federal Deposit Insurance Corporation insurance for each individual bank or savings and loan association. The attorney, or petitioner in pro per, shall immediately file an ex parte petition for an order authorizing establishment of additional blocked accounts into which funds exceeding the insurance limit shall be deposited.

(d) Petitioners and attorneys should carefully monitor the interest rates being earned on blocked funds. They should strive to earn the maximum amount of interest possible, even if it means obtaining an ex parte order from the Court to remove the funds from one institution to place them in another earning higher interest rates.

(Rev. 7/1/01) (Renumbered 7/1/07)(Eff. 1/09)

4.1.10 Appointment of Probate Referee

The Probate Referee for Santa Cruz County, for all cases, is Victor M. Campos, P.O. Box 838, Capitola, CA 95010-0838. Telephone: (831) 464-2222, Fax: (831)464-2282

(Rev. 1/1/06) (Renumbered 7/1/07)

RULE 4.2
PROBATE OF ESTATES

4.2.01 Letters of Special Administration

Petitions for Letters of Special Administration ordinarily will not be granted on less than 24 hours' notice to the surviving spouse, the person nominated as executor and any person the Court determines to be entitled to notice. In making the appointment, preference is given to the person entitled to letters, but if it appears that a contest exists, the Court may appoint a neutral person or corporation as special administrator.

(Rev. 7/1/91)

4.2.02 Petitions for Appointment

(a) When a Petition for Probate of a Will or Codicil is filed, the original of the document being offered for probate shall whenever possible be filed prior to or concurrently with the petition. If the Will or any part thereof is handwritten, an exact typewritten copy of the handwritten portion must also accompany the petition.

(b) If the Will is in a foreign language, a translation by an expert shall be submitted at the time of filing the Petition for Probate. An affidavit as to the expertise of the translator shall accompany the translation.

(c) Petitions for probate of lost wills must clearly state on their face that the will is lost and both the published and mailed notice must so state. Evidence will be required to overcome the presumption of revocation under Probate Code section 6124. In those cases where there is no copy of the will, the petition for probate shall include a written statement of the testamentary words or their substance.

(d) Attachment 8 must clearly identify the relationship of lineal descendants to predeceased heirs and beneficiaries.

(Rev. 7/1/01)

4.2.03 Declination of Executor

If a nominated executor declines to act, a signed declination must be filed prior to the hearing date.

(Eff. 7/1/91)

4.2.04 Duties and Liabilities of Personal Representative

"Duties and Liabilities of Personal Representative" must be filed with the court before the hearing of the Petition for Probate. The Judicial Council form, "Confidential Supplement to Duties and Liabilities of Personal Representative," is not required to be filed.

(Rev. 7/1/01)(Eff. 1/09)

4.2.05 Consent of Representative(s)

Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal representative must be filed for each proposed personal representative.

(Rev. 1/1/91) (Rev. 7/1/03)(Eff. 1/09)

4.2.06 Notices

(a) Publication: The Clerk DOES NOT handle the mailing and publication of notices. The Notice of Petition to Administer Estate must be filed with the Petition for Probate.

(b) Defective Notice:

1. Publication Correct but Mailing Defective: The hearing normally will be continued to allow enough time for the mailing of the required amended notice. Republication is not required.

2. Mailing Correct but Publication Defective: The matter must be taken off calendar and a new notice must be given by publication and mailing.

(c) In a Petition for Probate of a Will, all persons and organizations named in the Will or Codicils shall be listed in the appropriate attachment and noticed.

(d) If the decedent had no known heirs, or heirs of a predeceased spouse pursuant to Probate Code Section 6402.5, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate any heirs.

(e) All petitions for probate filed prior to the issuance of letters must be noticed pursuant to Probate Code Section 8100 et seq. including publication.

(f) A petition for appointment of a successor personal representative does not require a Notice of Petition to Administer Estate. Notice shall be given in the manner provided in Probate Code Section 8100, et seq. Publication is not required.

(Rev. 7/1/01) (Rev 7/1/03)(Eff. 1/09)

4.2.07 Bond Waivers

If written waivers are filed with the Court, bond may be waived by the Court pursuant to Probate Code Section 8481, provided all heirs or beneficiaries are competent to act. If any such persons are incompetent (e.g., minors), an appropriate representative must waive bond on their behalf. (Rev. 7/1/01)(Eff. 1/09)

4.2.08 Inventory and Appraisal

An Inventory and Appraisal must be filed within four months from when Letters are issued to the general Personal Representative. The Court will set a date for proof of filing the Inventory and Appraisal at the time the Order for Probate is granted. This proof date will not require an appearance in court. Compliance will be determined by the clerk's office. The Inventory and Appraisal must be filed five court days prior to the date set for proof of filing. If the Inventory and Appraisal is not timely filed the Clerk's office will set an Order to Show Cause hearing at which counsel will be required to personally appear and explain why the Inventory and Appraisal has not been timely filed.

(Eff. 1/1/91)(Rev. 7/1/01(Eff. 1/09)

4.2.09 Continuances

Matters set by the Court, such as compliance hearings and status hearings, can be continued only by the Judge in open court on the date originally set. Continuances for these matters can be requested in writing by filing a formal declaration with the court ten court days before the hearing.

(Eff. 1/09)

4.2.10 Sale of Real Property

(a) A copy of the contract of sale shall be attached to the petition for confirmation of sale.

(b) Petitions for confirmation of sales of real property shall set forth the amount of bond in force at the time of the sale and the amount of property in the estate which should be covered by a bond. If no additional bond is required or if bond is waived, that fact should be alleged in the petition.

(c) Where the estate owns only a fractional interest in the real property, the petition must state whether the sale is conditioned upon closing of a sale of the un-owned fraction.

The other fractional owner(s) shall be noticed of the hearing. If the whole parcel is being sold, only the fractional interest and its value shall be listed on the petition and used to calculate the overbid.

(d) Overbids: All overbids in open Court must be in writing before the Court will accept the offer and grant the sale.

(e) Reappraisals: When the date of the confirmation hearing is more than one year after date of death, a reappraisal for sale must be filed with the court before the confirmation hearing can proceed. Reappraisals must be made by the probate referee unless the court has waived appointment of the referee. The following information should be inserted in the reappraisal for sale immediately after the legal description of the real property:

(1) The appraised value as of the date of death.

(2) The appraised value as of the date of the appraisal.

(f) Cash deposit on bids for real property: Bids for the purchase of real property must be accompanied by a minimum of ten percent of the amount bid. When an overbid is made in court, the bidder must submit cash, money order, or certified check at the time of the hearing in the amount of ten percent of the minimum overbid.

(Eff. 1/1/91)(Rev. 7/1/99)(Rev. 7/1/03)(Eff. 1/09)

4.2.11 Petitions for Instructions

A Petition for Instructions is appropriate only when no other procedure is provided by statute. For example, the Court will not determine the manner in which an estate should be distributed on a Petition for Instructions. Such direction can only be obtained by a petition for distribution or by a petition to determine persons entitled to distribution.

(Eff. 1/1/91)(Rev. 7/1/99)

4.2.12 Petitions for Distribution

(a) Ex Parte Preliminary Distribution Petitions: Ex parte petitions for distribution must set forth the justification for such urgent action.

(b) Description of Assets: Property to be distributed shall be listed and described in detail; description by reference to the Will or inventory is not acceptable. This applies to preliminary and final distributions with or without an accounting. If the distribution includes any interest in real property, the legal description, including the assessor's parcel number, must be included in the body of the decree or in an attachment incorporated by reference.

(c) Specifically Bequeathed Property: If specifically bequeathed property is not in existence at the time of final distribution, the petition shall set forth a full explanation concerning that fact.

(d) Description of Distributees: The names and present addresses of all persons entitled to receive property of the estate must appear in the petition for final distribution.

(e) Allegations re Health Care Benefits: The first report of administration of a decedent's estate must contain allegations either that notice of decedent's death has been provided to the Director of Health Services required by Probate Code Sections 9202 Director of Health Services required by Probate Code Sections 9202 and 215 or that no such notice if required.

(f) Distribution to Intestate Heirs: The relationship of heirs who take by intestacy should be sufficiently indicate parentage and the approximate date of the parent's death.

(g) Interest on General Pecuniary Legacies: The Court will strictly enforce Probate Code Section 12003 pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the Will. Attorneys are responsible for determining the correct rate and computing the amount of interest.

(h) Payment of Taxes: The petition for final distribution must address the question of the source of the payment must show the computation and the order for final distribution must include the proration. All persons sharing the tax obligation shall be given notice of the hearing on the petition.

(i) Allegation re Character of Assets: The petition for distribution must contain an allegation as to the separate or community character of the property.

(j) Closing Expenses: When closing expenses are requested, the petition and order must set forth the distribution of any unused portion thereof.

(k) When there is insufficient cash in the estate to pay the statutory attorney's fees, the petition shall address the method of

payment of the fees (e.g., via a lien on real property, or pursuant to outside agreement between the attorney and all residual beneficiaries, etc.). There shall be sufficient evidence to indicate that all beneficiaries affected are aware of the arrangement.

(Rev. 7/1/01) (Rev. 7/1/03)(Eff. 1/09)

4.2.13 Final Discharge

The "order" portion of the Declaration and Order for Final Discharge shall be completed in full except for the date and name of the judge.

(Eff. 1/1/91)

4.2.14 Removal of a Personal Representative

With the petition for removal, the petitioner shall submit a proposed order directing the clerk to issue a citation. The petitioner shall also submit the citation requiring the representative to appear personally and to show cause why the petition for removal should not be granted and letters revoked.

(Eff. 1/1/91)(Rev. 7/1/01)

4.2.15 Compensation of Personal Representatives and Attorneys in Probate Estates

(a) Allowance on account of statutory compensation in advance of final distribution must be in accordance with the work performed. Ordinarily, no more than 75% of the statutory compensation will be allowed before approval of final distribution. In the Court's discretion, the full amount may be allowed where the estate or heirs will benefit (e.g., to reduce income taxes) or where ordinary services have been completed and final distribution is delayed only in order to perform extraordinary services.

(b) The Court may deduct from the personal representative's statutory commission any sums paid from estate funds for the performance of the representative's ordinary duties.

(c) Community Property Election:

1. If both halves of the community property are properly included in the probate proceeding, statutory compensation calculated on both halves of the community property will be allowed.

2. In cases in which only one half of the community property is subject to probate, compensation for ordinary services may only be based upon the value of that part of the community property which is subject to probate.

(d) Extraordinary Services:

1. Ordinarily, compensation for extraordinary services will not be allowed or paid before the final accounting has been approved by the Court.

2. Except as stated below for routine real property sales and federal estate tax work, applications for fees or commissions for extraordinary services shall include the information specified in CRC Rule 7.703.

(e) Sales of Real Property: In determining the compensation of an attorney for extraordinary services rendered with respect to real property sales, the Court will consider the amount of time involved, whether or not a real estate broker was employed, the involvement of the attorney in negotiations, the nature of other services rendered (e.g., drafting of the sales agreement and its complexity, preparation of deeds and other documents) and other similar information. In cases where there is a confirmation of sale hearing, the Court will consider $1,000 to be reasonable compensation. If that amount is requested, detailed information as to services rendered will not be required. This guideline only applies to attorneys' compensation, however, a personal representative may also request compensation for extraordinary services in regard to sales of real property.

(f) Preparation of Federal Estate Tax Return: In determining the compensation of a personal representative or an attorney for the preparation of a federal estate tax return, the Court will ordinarily consider the hours spent, the intricacy or peculiar nature of any of the issues or computations involved, the extent of any audit, the value of the gross estate, the amount of tax and other similar information.

If neither the personal representative nor an attorney provides the Court with such information the Court will assume that the sum of $1,000 is a reasonable amount for the preparation of the Federal Estate Tax Return.

(g) Costs: Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items

advanced by such party must be separately stated and described.

(h) Extraordinary Compensation When Statutory Compensation Exceeds $20,000: Whenever statutory compensation exceeds $20,000 and the attorney or Personal Representative requests extraordinary compensation that exceed the amounts of rules 4.2.15 (e) or (f) above, the request must be supported with a declaration that outlines all the ordinary and extraordinary services that were provided

(Eff. 1/1/91)(Rev. 7/1/01) (Rev. 7/1/03)(Eff. 1/09)

4.2.16 Accounts and Reports of Executors and Administrators

(a) Notation of omitted schedules: Where a particular schedule is unnecessary, it need not be included and that fact must be noted in the Summary of Account with the word "none" in the blank provided for the total from the schedule.

(a) Contents of account: The account and report must contain the following material:

(1) The beginning and ending dates of the account.

(2) A detailed description of all receipts and all disbursements of the fiduciary.

(3) An explanation either in the account, or in the report accompanying the account, for any item that is not self-explanatory.

(4) Receipts indicating the date of receipt, the source of the payment, and the amount. Each receipt from a source that pays more frequently than once a year must be described; a lump sum amount is not permissible.

(5) A description of all disbursements indicating the date of the expenditure and the nature of the expense, its purpose, and the amount.

(New Eff. 1/09)

RULE 4.3
CONSERVATORSHIPS AND GUARDIANSHIPS

4.3.01 Court Investigation Agency

An extra copy of all petitions,, accountings and Notice of Hearing in conservatorships and guardianships must be submitted to the clerk for the appropriate Court investigation agency at the time of filing the petition and accounting.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.02 Temporary Conservatorships and Guardianships

(a) The petition for appointment of a temporary conservator and guardian may be filed with or after the filing of a petition for a permanent conservator/guardian. The petition must state facts establishing the urgency requiring the appointment of the conservator or guardian (e.g., situations requiring immediate action to protect the health, welfare or the estate of the proposed conservatee/minor). Notice shall be given as set forth in Probate Code section 2250(e), unless the Court for good cause otherwise orders. A temporary conservator/guardian will be appointed without notice only in emergency situations.

(b) If the attorney is informed that the petition for appointment of a permanent conservator will be contested, all known potential objectors must be given at least 24 hours notice of the time and place the petition for appointment of the temporary conservator will be presented unless the Court for good cause waives this requirement.

(c) Ordinarily the Court will require a bond or a blocked account for temporary conservators/guardians of the estate.

(d) Good cause must be shown for special powers to be granted without a hearing. If special powers are sought, they must be specified in the petition and supported by factual allegations.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.03 Petitions for Appointment of Conservators/Guardians

Unless a temporary conservator or guardian has been appointed, forty-five (45) days notice is required on all petitions for appointment.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.04 Assessments

(a) A $200 fee for the services of the Court Investigator shall be imposed upon completion of each investigation or review unless waived pursuant to Probate Code Sections 1513.1(a) and 1851.5(b).

(b) Assessments are charged to the estate and shall be paid to County Collections, 701 Ocean Street, Room 150, Santa Cruz, CA 95060.

(c) All assessments must be paid before the Court will sign an order settling the final account. All previous waivers of assessments will be reviewed at that time to determine the estate's ability to pay.

(Eff. 1/1/91)(Rev. 7/1/01)

4.3.05 Independent Powers

If independent powers under Probate Code Sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers and the reasons requiring the powers requested. Only those powers necessary and proper shall be granted. The same powers must be attached to the proposed order or letters.

(Eff. 1/1/91)(Eff. 1/09)

4.3.06 Limited Conservatorships

(a) If the proposed conservatee is a developmentally disabled person (Probate Code Section 1420), a petition for limited conservatorship is mandatory. However, pursuant to Probate Code Section 1828.5(d), upon investigation, the Court may find that a general conservatorship (as opposed to a limited conservatorship) is appropriate.

(b) Appointment of counsel for a proposed limited conservatee is mandatory. To avoid continuance or delay an ex parte application and order for appointment of counsel should be submitted to room 110 to the attention of the Probate Examiner, prior to the hearing to avoid continuance or delay. If a Public Defender is requested, facts in the application must assert the proposed conservatee's financial inability to obtain private representation.

(Eff. 1/1/91)(Eff. 1/09)

4.3.07 Notice of Residence

In every conservatorship, Clerk Form 714 "Notice of Conservatee's Residence", must be filed with the initial petition for appointment, and with all petitions. Judicial Council form GC-080, "Change of Residence Notice", shall be filed as and when appropriate.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.08 Declaration Under UCCJEA

In any guardianship of the person a declaration under the Uniform Child Custody Jurisdictional and Enforcement Act (Judicial Council form GC-120) shall be filed with the petition for appointment and at any time there is a change of address of the minor. A duplicate copy shall be included for the appropriate Court investigation agency.

(Eff. 1/1/91)(Eff. 1/09)

4.3.09 Conservatee's Mental Capacity

A proposed conservatee who has made a nomination and/or waived the requirement of a bond, must prove to the Court that he or she has the capacity to understand the nature and significance of such actions. This may be done by oral representation at the hearing for appointment. A statement by counsel that the conservatee is present and does not object is not sufficient. This also applies where the proposed conservatee is the petitioner.

(Eff. 1/1/91)

4.3.10 Guardianship Funds for Support of Minor

In all cases where it is intended that guardianship funds be used for the ordinary expenses of supporting a minor and there is a

parent living who has the obligation to support the minor, the guardian shall obtain Court approval prior to the expenditure of funds for that purpose (Probate Code Section 2422). A petition for authority to expend such funds must be presented in a separate petition, containing a detailed explanation, including financial statements, of the parents' inability to support the child.

(Eff. 1/1/91)(Eff. 1/09)

4.3.11 Inventory and Appraisal Required

An inventory shall be filed in all cases where there is a conservatorship/guardianship of the estate, even in a case where relief from the requirement of filing accountings may be sought under Probate Code Section 2628. When there are no assets in the hands of the fiduciary, the inventory shall so indicate and state who has possession of any assets.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.12 Review Hearing for Inventory and Appraisal and for Accountings

The Inventory and Appraisal is due 90 days from appointment of the conservator or guardian. A proof of filing date will be set at the time of the appointment to confirm that the documents have been filed. A review hearing to monitor the timely filing of the first and subsequent accountings will also be set from the time of the initial appointment. No appearance is required for these proof of filing dates of the Inventory and Appraisal or for proof of filing of Accountings. However, if the Inventory and Appraisal or Accounting is not timely filed the clerk's office will set an Order to Show Cause hearing at which time sanctions or surcharges may be imposed for failure to timely file the required documents.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.13 Separate Accounting for Several Minors

When a guardianship of the estate has been instituted for more than one minor, the interests of each minor must be separately stated in the inventory and separate accounting schedules must be presented so that the receipts, disbursements and assets pertaining to each minor's estate are readily ascertainable.

(Eff. 1/1/91)

4.3.14 Successor Conservator/Guardian

(a) The petition for a successor conservator/guardian shall be submitted on the same form approved by the Judicial Council for initial petitions.

(b) Successor conservators/guardians of the estate shall file an accounting one (1) year after the successor appointment date and thereafter at least biannually.

(Eff. 1/1/91)

4.3.15 (Revoked 7-1-99)

4.3.16 (Revoked 7-1-99)

4.3.17 Accounts in Guardianship Proceedings

(a) Frequency of accounts

(1) Guardianship accounts must be filed after the first anniversary of the establishment of the guardianship and biennially thereafter. The account must be filed within 60 days after the anniversary date.

(2) Successor guardians must file an accounting one-year after the successor appointment date and biennially thereafter.

(b) Presence of ward necessary if final account waived

The court ordinarily will not approve a ward's waiver of the final account unless the ward is present at the time of hearing and competent to answer questions by the court.

(c) Reports accompanying accounts In addition to the contents required by Probate Code section 1064, the report accompanying an account must contain the following:

(1) A statement of the age, health, and the present address of the ward.

(2) If income-producing property is inventoried in the guardianship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;

(3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a guardian or the processing of any documents related to a guardian;

(4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, who has duties or responsibilities related to the appointment of a guardian or any processing of any documents related to a guardian;

(5) Whether the guardian, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and

(6) Whether the guardian has sold, leased, or rented any real or personal property to any person with whom the guardian has a family or affiliate relationship as defined in Probate Code section 2403, subdivision (c)(2).

(New Eff. 1/09)

4.3.18 Waiving of Accounts

(a) Pursuant to the provisions of Probate Code Section 2628, the Court may waive the requirement of an accounting. Any prior grant of independent powers will be reconsidered at that time, and should be addressed by the petition. The petition must allege whether the conservatee or minor (over the age of 12) is aware of the request and agrees to the waiver. In conservatorships, a Notice of Residence is also required.

(b) If the conditions of Probate Code Section 2628 are satisfied and the Court approves the petition to dispense with the accounting, no further filings of accounts will be necessary until such time as the provisions of Probate Code Section 2628(a) are no longer applicable. This must be explicitly set forth in the order. The petitioner must nevertheless continue to keep accurate records in order to prepare any accounts which may be required under Probate Code sections 2628(b) and (c).

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.19 Reports Accompanying Accounts in Conservatorships

In addition to the contents required by Probate Code section 1064, the report accompanying a conservatorship account must contain the following:

(1) The present address of the conservatee;

(2) If income-producing property is inventoried in the conservatorship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;

(3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or the processing of any documents related to a conservator;

(4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or any documents related to a conservator;

(5) Whether the conservator, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and

(6) Whether the conservator has sold, leased, or rented any real or personal property to any person with whom the conservator has a family or affiliate relationship as defined in Probate Code section 2403, subdivision (c)(2).

(Eff. 1/09)

4.3.20 Termination of Conservatorships and Guardianships

(a) Investigation Reports: When the conservatorship/ guardianship is being terminated for reasons other than death or attaining the age of majority, a hearing must be set at least forty-five (45) days in advance in order to allow time for an investigation report.

(b) Notice: Notice must be given to a former minor or conservatee on the settlement of the final account.

Notice must also be given to the representative of a deceased ward or conservatee. If the representative of the estate is the same person as the guardian or conservator or if there is no such representative, notice must also be given to the heirs or devisees of the deceased ward or conservatee.

(c) Discharge of a guardian: Discharge of a guardian will not be made in the order settling final account. A separate petition and order for final discharge (Form GC-395) must be submitted together with the receipt executed by the former minor. The petition must state the date on which the minor reached majority. A guardian is not entitled to a discharge until one year after the minor has attained majority unless the minor has given the guardian a valid release.

(Eff. 1/1/91)(Rev. 7/1/01)(Eff. 1/09)

4.3.21 Fees and Commissions

(a) The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services "extraordinary". Fee requests must comply with CRC Rule 7.751.

(b) Attorney Fees

In determining the reasonable attorney's fees to be granted in guardianships, conservatorships and trusts within the jurisdiction of the Court, the Court will require compliance with Section 6148 of the Business and Professions Code as follows:

1. In any such matter in which it is reasonably foreseeable that the total expenses to a client, including attorney fees will exceed one thousand dollars ($1,000), there should be a written contract between the attorney and client for services in the matter containing all of the following:

a. The hourly rate and other standard rates, fees and charges applicable to the matter.

b. The general nature of the legal services.

c. The respective responsibilities of the attorney and the client as to the performance of the contract.

2. Such a written contract will not be required in any of the following situations:

a. Services are rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

b. An arrangement as the fee implied by the fact as previously rendered to and paid for by the client.

c. If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

d. If the client is a corporation or a public entity.

3. In any guardianship, conservatorship or trust within the jurisdiction of the Court where there is no such written contract reasonable attorney's fees will be determined by the Court using hourly rates that are customary in Santa Cruz County.

4. In any case, attorney's fees may be denied or reduced below reasonable or contractually agreed amounts if the Court determines that the services have not been performed in an efficient, timely or competent manner.

5. Only legal fees for counsel appointed by the Court to represent the conservatee may be approved and included in the Order Appointing Conservator.

6. Where an attorney is the fiduciary and is a member of a law firm, attorneys' fees will not be allowed unless a declaration is executed by the fiduciary agreeing that the fiduciary will not share in the attorneys' fees to be received by the firm.

(Rev. 7/1/03)

(c) Conservator or Guardian Commissions:

(1) In the event the attorney has performed bookkeeping and other services for an individual fiduciary, the Court may award the

fiduciary's attorney a larger compensation and the individual fiduciary a lesser compensation.

(2) Ordinarily, reasonable compensation for guardians and conservators who are not private professional fiduciaries shall not exceed $40 per hour.

(d) The fiduciary may employ tax counsel, accountants or other tax experts for the preparation of tax returns and for other tax related services and pay from the funds of the estate for such services. The Court may deduct from the fiduciary's commission any sums paid from estate funds for performance of the fiduciary's duties such as ordinary accounting and bookkeeping services.

(Rev. 7/1/01) (Rev. 7/1/03)(Eff. 1/09)

4.3.22 Additional Contents for Petitions Filed by Private Professional Conservators

(a) Registration information required: Any petition to appoint a conservator filed by a private professional conservator must include his or her Santa Cruz County and State of California registration numbers and the date he or she registered. No petition by a private professional conservator will be heard unless he or she is currently registered with both the county and the state. Proof of compliance with the statewide registry must be submitted to the Court Investigator's Office. Any private professional conservator must comply with all California state licensing requirements before he or she can be appointed in Santa Cruz County.

(b) Disclosure of other proceedings required: The petitioner must disclose, by separate declaration, any proceedings, pending or concluded in Santa Cruz County or any other jurisdiction, where orders have been issued or are sought to be issued which in any way affect the ward or conservatee that is the subject of the proceedings in Santa Cruz County.

(New Eff. 1/09)

RULE 4.4
TRUSTS

4.4.01 Accounts filed by trustees must conform to the requirements of 4.2.16

(Renumbered Eff. 1/09)

4.4.02 Contents of First Account

The first account filed must clearly reconcile the amount first chargeable with the decree of distribution of the estate from which the property was received.

(Renumbered Eff. 1/09)

4.4.03 Description of Principal and Income

Receipts and disbursements must be allocated between principal receipts and disbursements and income receipts and disbursements.

(Renumbered Eff. 1/09)

4.4.04 Frequency for Filing Accounts

Trustees must file accounts at least every two years. The fact that an account covers more than a two-year period of time will not constitute grounds for deviation from any of the normal requirements of an account.

(Renumbered Eff. 1/09)

4.4.05 Service on Beneficiaries When Power Sought is Not Conferred

When the trustee seeks instructions to exercise a power not conferred by the will, a copy of the petition must be served by mail on all beneficiaries.

(Renumbered Eff. 1/09)

4.4.06 Bond for Trustee

Trustees appointed by the court are subject to the same rules as Personal Representatives pertaining to the posting of bond.

(Renumbered Eff. 1/09)

4.4.07 Petition for Confirmation of Trust Assets pursuant to Estate of Heggstad

(a) Copies of all testamentary instruments shall be attached to the petition.

(b) Copies of pertinent and current documents of title to the assets in question shall be attached to the petition. Petitioner shall obliterate confidential information such as social security number before attaching the document to the petition.

(c) If the assets to be confirmed are not clearly declared as trust assets in the instrument, or if title was transferred to the trustee and later transferred from the trustee, all persons named in any testamentary instrument and heirs at law must be listed in the petition and given notice, in addition to the notice required by Probate Code § 17203.

(New 7/1/01)(Renumbered Eff. 1/09)

4.4.08 Trustee Compensation

Compensation for the trustee will ordinarily be allowed as provided in the governing instrument, unless the Court fixes a greater or lesser amount pursuant to Probate Code section 15680(b). If the instrument is not specific, the Court will establish reasonable compensation. A fee of 1% of the fair market value of the ending on hand will ordinarily constitute reasonable compensation, prorated if services have been rendered for less than a full year. If compensation higher than 1% of the ending market value is requested, the request must be supported by a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate.

(New 7/1/01)(Renumbered Eff. 1/09)

4.4.09 Attorney Fees

Compensation for attorney for the trustee will ordinarily be allowed as provided in the governing instrument. If the instrument is not specific, the Court will establish reasonable compensation, based on a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate.

(New 7/1/01)(Renumbered Eff. 1/09)

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Shasta County
Probate Policy Rules

Effective July 1, 2010

SECTION 15
PROBATE RULES (SUPERIOR COURT, ONLY)

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SECTION 15
PROBATE RULES (SUPERIOR COURT, ONLY)

15.01 ALL PURPOSE ASSIGNMENT

All probate, conservatorship and guardianship proceedings are assigned for all purposes to the supervising judge of the probate division as designated in administrative order no. 01 issued each year.

(Adopted, effective January 1, 2005)

15.02 CAPTION OF PETITIONS AND POSTING

The caption of a petition shall be all-inclusive as to the order sought so that the matter may be properly calendared and posted, and any filing fees determined. If any part of the estate is to be distributed to a trust, the caption shall so indicate.

(Amended, effective January 1, 2005)

15.03 SIGNING AND VERIFICATION OF PLEADINGS

Pleadings shall be signed by the attorney and each representative, trustee, guardian, or conservator. The pleadings shall be verified by a representative, trustee, guardian, or conservator personally and not by the attorney (CCP §446).

(Amended, effective January 1, 2005)

15.04 ADDITIONAL NOTICE REQUIREMENTS

A copy of the petition shall be served with each notice of hearing when served on a person requesting special notice or where the petition is the accounting of a testamentary trustee. Where the fiduciary or attorney is requesting fees or commissions other than those computed by Probate Code §10800 and §10810, the notice of hearing and a copy of the petition shall be served on all interested parties. The proof of service shall show service of the copy of the petition as well as the notice of hearing.

(Amended, effective January 1, 2005)

15.05 WORDING OF PROBATE ORDER

The moving party shall submit a proposed order for every petition. Probate orders shall be worded so that their general effect may be determined without reference to the petition on which they are based.

(Amended, effective July 1, 2005)

15.06 TIME FOR SUBMITTING ORDERS AND AFFIDAVITS OF PUBLICATION

All orders prepared by the moving party and affidavits of publication shall be filed or lodged with the clerk at least three court days before the date of hearing.

(Amended, effective January 1, 2005)

15.07 UNCONTESTED MATTERS—APPEARANCE OF COUNSEL (Probate Code §1000)

(A) Except as otherwise provided by law, all verified petitions in probate matters shall be deemed submitted without an appearance, except that the attorney or petitioner shall appear on a petition for confirmation of sale of: (1) real property, or (2) personal property valued in excess of $100.00. As used in this rule, "verified" means verified by the petitioner. Before denying any petition where there is no appearance under this rule, the court will continue the matter two weeks, or until the next succeeding calendar, whichever is later, to give the petitioner or the petitioner's attorney opportunity to appear. If there is no appearance or other response by the petitioner or the petitioner's attorney at the continued hearing, the court may drop the matter from the calendar.

(B) The petitioner or the petitioner's attorney shall appear on all petitions for appointment of guardian or conservator.

Comment: While some courts mail notice of continued hearing, it is the responsibility of the attorney to determine whether the matter has been approved or continued.

(Amended, effective January 1, 2005)

15.08 ORDER FOR FAMILY ALLOWANCE

The duration of an order for family allowance is limited to six months if no inventory and appraisement has been filed, and is limited to one year if an inventory and appraisement has been filed.

Comment: The court discourages requests for retroactive (nunc pro tunc) payment of family allowance. Requests for family allowance should be made in a timely fashion.

(Amended, effective January 1, 2005)

15.09 COMMISSIONS AND FEES IN PROBATE ESTATES

(A) All petitions for allowance of statutory fees or commissions on account before final distribution must contain the information required by CRC Rule 7.701. Ordinarily, no more that 75% of the statutory compensation will be allowed before approval of final distribution. In the court's discretion, the full amount may be allowed where the estate or heirs will benefit (e.g., to reduce income

taxes) or where ordinary services have been completed and final distribution is delayed only in order to perform extraordinary services.

(B) The court may deduct from the personal representative's statutory commission any sums paid from estate funds for the performance of the representative's ordinary duties.

(C) Community Property Election:

1. If both halves of the community property are properly included in the probate proceeding, statutory compensation calculated on both halves of the community property will be allowed.

2. In cases in which only one half of the community property is subject to probate, compensation for ordinary services may only be based upon the value of that part of the community property which is subject to probate.

(D) Extraordinary Services:

1. Ordinarily, compensation for extraordinary services will not be allowed or paid before the final accounting has been approved by the court.

2. Except as stated below for routine real property sales and federal estate tax work, petitions for fees or commissions for extraordinary services shall include the information specified in CRC Rule 7.702.

(E) Sales of Real Property: In determining the compensation of any attorney for extraordinary services rendered with respect to real property sales, the court will consider the amount of time involved, whether or not a real estate broker was employed, the involvement of the attorney in negotiations, the nature of other services rendered (e.g., drafting of the sales agreement and its complexity, preparation of deeds and other documents) and other similar information. In cases where there is a confirmation of sale hearing, the court will consider $ 750.00 to be reasonable compensation. If that amount is requested, detailed information as to services rendered will not be required. This guideline only applies to attorneys' compensation, however, a personal representative may also request compensation for extraordinary services in regard to sales of real property.

(F) Preparation of Federal Estate Tax Return: In determining the compensation of a personal representative or an attorney for the preparation of a federal estate tax return, the court will ordinarily consider the hours spent, the intricacy or peculiar nature of any of the issues or computations involved, the extent of any audit, the value of the gross estate, the amount of tax and other similar information.

If neither the personal representative nor an attorney provides the court with such information, the court will assume that the sum of $ 750.00 is a reasonable amount for the preparation of the Federal Estate Tax Return.

(G) Costs: Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items advanced by such party must be separately stated and described.

(Amended, July 1, 2008)

15.10 REQUIRED MATTERS IN A PETITION FOR FINAL DISTRIBUTION

In addition to items otherwise required by law, a petition for final distribution shall contain the following matters, unless set forth in the account and report:

(A) A full and complete description of all assets on hand.

(B) Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

(C) A computation of the attorney fees and representative commissions requested.

(D) A statement regarding payment of all taxes pursuant to Probate Code §9650.

(E) If the decree of distribution is to distribute assets in kind in a manner that all persons will not share equally in each asset and the distribution is other than pursuant to the will or the laws of intestate succession, then an agreement must be signed by each heir and devisee with the signatures acknowledged accepting the plan of distribution.

(F) A schedule of claims showing the name of the claimant, amount claimed, date presented, date allowed, and, if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice or rejection with

affidavit of mailing to the creditor must be filed.

(G) The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

(H) An itemization of costs for which counsel has been paid or is seeking reimbursement. Ordinary overhead items, including, but not limited to, costs of duplication of documents, telephone calls, and automobile mileage are not proper cost items.

(I) A schedule showing the proration of taxes, fees, and costs.

(J) A statement of what property is separate and what property is community.

(K) If distribution is to be made pursuant to an assignment of interest, the assignment shall be filed and acknowledged and the details of the consideration set forth.

(L) If distribution is to be made to a trust, either an acknowledged statement by the trustee accepting the property under the terms of the trust, or a petition by the executor or administrator for the designation of a substitute trustee shall be filed.

(M) If the distribution is to be made to a minor or an incompetent, either facts showing compliance with Probate Code §3300, et seq., or current certified copies of letters of conservatorship or guardianship of the estate shall be filed.

(Amended, effective January 1, 2005)

15.11 ACCOUNTS IN PROBATE PROCEEDINGS

(A) In any probate proceeding in which an accounting must be filed, including guardianship, conservatorship, and trust proceedings, only the original summary of account shall be filed. Detailed supporting schedules must be lodged with the clerk, with a copy of the summary of accounts attached as a cover sheet. The supporting schedules shall be retained by the clerk and returned following judicial review.

(B) In addition to the information and documents required by Probate Code Sections 1060-1064 and 2620, the supporting documents for any accounting in a guardianship or conservatorship proceeding other than the first accounting shall include every "account statement", as defined in Probate Code Section 2620(c)(1), that shows the balance of the account at the close of the preceding accounting period.

(C) All summaries of account shall be filed and all supporting schedules shall be lodged within 90 days of the close of the accounting period to which they relate.

(Amended, effective January 1, 2009)

15.12 PETITION TO ESTABLISH FACT OF DEATH

A petition to establish the fact of death, (terminate a joint tenancy or life estate) shall be verified and shall have attached as exhibits:

(A) A copy of any instrument relating to any interest in the property; and

(B) A copy of the death certificate.

Comment: There is no statutory provision for the determination by a court for attorney fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character should be made.

(Amended, effective January 1, 2005).

15.13 CONSERVATORSHIPS—CARE PLANS

(A) Conservators of the person and conservators of the estate for all conservatorships shall file a Care Plan with the court within 60 days from their appointment using the form attached as Appendix H to these Local Rules. At the time of the initial hearing the court will set a date for the matter to be placed on calendar for confirmation of the filing of the Care Plan. No appearances are required if the plan has been filed within the prescribed time limits, unless otherwise ordered.

(B) This Rule does not apply to the Public Guardian.

(Amended, effective July 1, 2009)

15.14 GUARDIANSHIPS—ANNUAL REPORTS

To ensure compliance with the annual reporting requirement of Probate Code §1513.2 and California Rules of Court, Rule 7.1003, a hearing date will be scheduled for no later than one month after the anniversary date of the date of every order appointing a person as a guardian. The clerk will mail to the guardian Judicial Council Form GC-251, Confidential Guardianship Status Report, at least one month before the hearing date. If the report is filed prior to the date for the hearing, no appearance will be necessary unless the court orders otherwise, and the next annual reporting date will be scheduled.

(Amended, effective January 1, 2005)

15.15 TENTATIVE RULINGS

The court issues tentative rulings in advance of the time set for hearing. The rulings are posted on the court's website (www.shastacourts.com) and are available by clicking on the "Tentative Rulings" link, then clicking on the "Probate" link.

(Amended, effective January 1, 2008)

15.16 TELEPHONIC APPEARANCES

Counsel are encouraged to appear by telephone in probate hearings at which no witness will be called to testify. The provisions of local rule 5.13 shall apply to such appearances.

(Adopted, effective January 1, 2006)

15.17 FEES AND COMMISSIONS IN GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS

(A) Attorney Fees In General: In determining the reasonable attorney's fees to be granted in guardianships, conservatorships and trusts within the jurisdiction of the court, the court will require compliance with Section 6148 of the Business and Professions Code as follows:

(1) In any matter in which it is reasonably foreseeable that the total expenses to a client, including attorney fees, will exceed one thousand dollars ($1,000.00), there should be a written contract between the attorney and client for services in the matter containing all of the following:

(a) The hourly rate and other standard rates, fees and charges applicable to the matter.

(b) The general nature of the legal services.

(c) The respective responsibilities of the attorney and the client as to the performance of the contract.

(2) In any guardianship, conservatorship or trust within the jurisdiction of the court where there is no such written contract, reasonable attorney's fees will be determined by the court using hourly rates that are customary in Shasta County.

(3) In any case, attorney's fees may be denied or reduced below customary or contractually agreed amounts if the court determines that the services have not been performed in an efficient, timely or competent manner.

(4) Only legal fees for counsel appointed by the court to represent the conservatee may be approved and included in the Order Appointing Conservator.

(5) Where an attorney is the fiduciary and is a member of a law firm, attorneys' fees will not be allowed unless a declaration is executed by the fiduciary agreeing that the fiduciary will not share in the attorneys' fees to be received by the firm.

(B) Guardianships and Conservatorships:

(1) All petitions for compensation to a guardian, conservator, or attorney for a guardian or conservator shall include the information required by CRC Rules 7.751 and 7.702. The court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services as "extraordinary." In determining the amount of just and reasonable compensation, the court will consider the factors set forth in CRC Rule 7.756.

(2) In the event the attorney has performed bookkeeping and other services for an individual fiduciary, the court may award the fiduciary's attorney a larger compensation and the individual fiduciary a lesser compensation.

(3) The fiduciary may employ tax counsel, accountants or other tax experts for the preparation of tax returns and for other tax

related services and pay from the funds of the estate for such services. The court may deduct from the fiduciary's commission any sums paid from estate funds for performance of the fiduciary's duties such as ordinary accounting and bookkeeping services.

(C) Trusts:

(A) Compensation of Trustees:

In determining or approving compensation of a trustee, the court will consider the factors set forth in CRC Rule *7.776*. Compensation for the trustee will ordinarily be allowed as provided in the governing instrument, unless the Court fixes a greater or lesser amount pursuant to Probate Code section 15680(b). If the instrument is not specific, the court will establish reasonable compensation.

(B) Attorney Fees:

Compensation for an attorney for the trustee will ordinarily be allowed as provided in the governing instrument. If the instrument is not specific, the court will establish reasonable compensation, based on a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate.

(C) The time for allowing compensation is governed by Probate Code sections 15680-15688. Petitions for periodic payments must comply with Probate Code section 2643.

(Adopted, Effective July 1, 2008)

15.18 COURT INVESTIGATION OF PETITIONS TO APPOINT GUARDIANS OR CONSERVATORS

(A) Every party petitioning to appoint a conservator shall provide a copy of the petition and all supporting documents to the court investigator. In the case of a guardianship, the petition and supporting documents shall be provided to the Clerk, who will deliver the documents to the Court Investigator.

(B) The fee for court investigations in guardianship and conservatorship proceedings is specified in the court's fee schedule, which is available at the public counter of the clerk's office or on the court's web site at www.shastacourts.com. Unless a fee waiver has been granted, the court investigation fee will be collected at the time of filing of any petition to establish a guardianship in which the proposed guardian is a relative, pursuant to Probate Code section 1513.1. In conservatorship proceedings, the court will determine whether to collect, waive or defer the court investigation fee after the investigator's report has been completed, pursuant to Probate Code section 1851.5.

(Amended, effective July 1, 2009)

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Sierra County
Rules of Court

Effective January 1, 2009

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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RULE 1. GENERAL RULES

1.1 NAME, CITATION AND EFFECTIVE DATE

(a) Rules Citation. These rules shall be known as the Sierra County Superior Court Rules and may be cited as SCR. These rules become effective on January 1, 2009 and supersede all other local rules previously adopted by the Sierra County Superior Court.

(b) Construction and Application of Rules. These rules shall be construed and applied in such a manner as to not conflict with the California Rules of Court and shall be liberally construed to serve the proper and efficient administration of justice in the Superior Courts of Sierra County. The Court may sua sponte or on motion change, dispense with, or waive any of these rules in the interest of justice.

(c) Severability of Rules. If any of these rules are found to be in conflict with any statute, rule or decision, the rule(s) shall be deemed to conform to said statute, rule or decision, and the remaining rules shall remain in force and effect.

(d) Telephonic Appearance. All counsel are required to be present at any contested hearing. Counsel may appear telephonically at all uncontested hearings, such as a Case Management Conference.

If counsel wish to appear telephonically for a contested hearing, permission must first be granted by the Court. Counsel may apply ex parte to the Judicial Secretary for such permission.

Sierra County Courts use CourtCall for telephonic hearings. Counsel are required to contact CourtCall to make arrangements to appear telephonically. The telephone number of CourtCall is 1-888-88COURT.

(Eff. 01/01/09)

1.2 SANCTIONS FOR VIOLATION OF LOCAL RULES

If a party or an attorney fails, refuses, or neglects to comply with these rules, the California Rules of Court, or any other rules or statutory requirements, the Court may, after notice and an opportunity to be heard, impose any and all sanctions authorized by law.

(Eff. 01/01/09)

1.3 GENERAL POLICY RE: COURTROOM DECORUM

(a) Courtroom Decorum rules have been adopted to foster orderly proceedings and respect for the Constitution of the United States, the Constitution of the State of California, the laws of this State, and the Superior Court.

(b) The rules of Courtroom Decorum set forth herein shall apply in all Superior Court proceedings unless a judicial officer orders otherwise in a particular circumstance. A judicial officer, upon appropriate application in a particular case, may waive the application of any particular rule or may impose additional rules applicable to such case.

(c) Each attorney who appears in court should:

(1) Pursuant to Business and Professions Code §6068(b) "maintain the respect due to the courts of justice and judicial officers."

(2) Be polite and considerate toward opposing counsel, opposing parties, witnesses, and members of the court's staff.

(3) Be familiar with the rules and guidelines set forth in this section as well as other applicable statutes and rules of conduct, ethics, and professionalism.

(4) Make reasonable efforts to advise clients, witnesses, and others accompanying them of these rules, and make a reasonable attempt to see that such persons abide by these rules.

(Eff. 01/01/09)

1.4 COURTROOM ATTIRE

(a) All attorneys, litigants, witnesses and spectators shall be required to dress and conduct themselves in a manner consistent with the traditional dignity of the Superior Court.

(b) All persons in the courtroom should dress in a manner that is not offensive or distracting to others of usual sensibilities. Counsel shall so instruct parties they represent, witnesses they call and persons accompanying them. No persons shall appear in court without a shirt, barefoot or with a bare midriff. The following shall not be worn in court: shorts, tank tops, or any clothing that displays inappropriate words or pictures.

(c) Bailiffs will remove any person from court who violates this rule. This rule does not limit the power of any judicial officer to further prescribe appropriate attire in the courtroom.

(Eff. 01/01/09)

RULE 2. LAW AND MOTION MATTERS

2.1 APPLICABILITY

This Rule applies to all civil Law and Motion proceedings.

(Eff. 01/01/09)

2.2 FORM OF PLEADINGS PRESENTED FOR FILING

All documents presented for filing must comply with California Rules of Court, in particular California Rules of Court §§ 311 through 315.

(Eff. 01/01/09)

2.3 PROPOSED ORDERS

At the time a Motion is filed in a civil case, it shall be accompanied by a Proposed Order. If there is opposition to the Motion, a

Proposed Order on behalf of the opposing party shall accompany the Opposition Memorandum.

(Eff. 01/01/09)

2.4 CALENDAR MATTERS

Law and Motion. Civil Law and Motion matters are heard in Department I generally on the second and fourth Fridays of the month at 9 a.m. and should be calendared accordingly. If counsel believe that the matter to be heard will take more than 10 minutes, counsel should contact the Court to schedule a longer hearing (530-289-3698). Such hearings are generally set on Wednesday afternoons.

(Eff. 01/01/09)

2.5 CONTINUANCES (CIVIL LAW AND MOTION ONLY)

Requests to Continue. Requests to continue should be noticed for the case management conference calendar. If there is insufficient time to notice the request on a regular civil law and motion day, counsel should contact the Court at (530) 289-3698 to specifically set the request. Counsel may appear in person or telephonically for this request. A stipulation by the parties to continue the hearing/trial date is not sufficient.

(Eff. 01/01/09)

2.6 APPLICATION FOR ORDER SHORTENING TIME AND EX PARTE ORDERS

(a) Good Cause. All applications for ex parte orders, including orders shortening time, shall be supported by an affidavit or declaration showing good cause for the order, and, where applicable, shall comply with California Rules of Court §379.

(b) Application for Ex Parte Orders. An application for an order shall not be made ex parte unless it appears by affidavit or declaration:

(1) That, within a reasonable time before the application, the party or counsel informed the opposing party or opposing party's counsel when and where the application would be made; or,

(2) That the party in good faith attempted to inform the opposing party or the opposing party's counsel but was unable to do so, specifying the efforts made to inform them; or,

(3) That, for reasons specified, the party should not be required to inform the opposing party or the opposing party's counsel.

(Eff. 01/01/09)

2.7 DISCOVERY

General Policy. The policy of the law is one of liberality in allowing discovery. Doubt will be resolved in favor of permitting discovery. It is also the policy of this Court that discovery be conducted in the most expeditious and least expensive manner. To that end, the Court will entertain motions for protective orders seeking relief from oppressive discovery and may grant monetary and other sanctions against evasive, uncooperative and dilatory counsel who make or oppose motions without substantial justification. Similarly, the Court will expect counsel to attempt to resolve any differences prior to filing any motions and, if a motion is filed, prior to the hearing.

(Eff. 01/01/09)

2.8 ATTORNEY FEES IN CIVIL ACTIONS OR PROCEEDINGS

(a) Promissory Notes and Contracts Providing for Fees. In actions on promissory notes and contracts providing for payment of attorney fees, whenever a prevailing party is entitled to recovery of reasonable fees, then the following schedule will be considered by the Court in awarding such fees:

(1) Default Action: Exclusive of costs and interest.

- Twenty-five percent (25%) of the first two thousand dollars ($2,000) awarded as damages with a minimum fee of three hundred dollars ($300);
- Twenty percent (20%) of the next four thousand dollars ($4,000);

- Fifteen percent (15% of the next four thousand dollars ($4,000);
- Ten percent (10%) of the next ten thousand dollars ($10,000);
- Five percent (5%) of the next thirty thousand dollars ($30,000); and
- Two percent (2%) of amounts in excess of the first fifty thousand dollars ($50,000), on the next one hundred thousand dollars ($100,000); and
- The Court, in its discretion, will fix fees for recoveries in excess of one hundred fifty thousand dollars ($150,000).

(2) Contested Action: The same amount as computed under subpart 2.8a(1) above, increased by reasonable compensation (computed on an hourly or per-day basis) for any additional research, general preparation, trial, or other services, as may be allowed by the Court.

(b) Attorney Fees When Defendant Is the Prevailing Party. When the defendant is the prevailing party, the fees will be reasonable compensation (computed on an hourly or per-day basis) for research, general preparation, trial, or other services rendered, as may be allowed by the Court.

(c) Clerk's Calculation of Reasonable Attorney Fees. When a prevailing party is entitled to the recovery of reasonable attorney fees in an otherwise appropriate clerk's judgment, the clerk will include attorney fees computed pursuant to the fee schedule included in this Rule.

(d) Determination of Attorney Fees in Excess of Schedule. When a party claims attorney fees in excess of those allowed by this Rule, then an application for attorney fees must be made to the Court; the application must be supported by declarations setting forth the factual basis for the claimed fees. The fees will be fixed thereupon by the Court.

(Eff. 01/01/09)

RULE 3. CASE MANAGEMENT

3.1 CASE MANAGEMENT CONFERENCE

Pursuant to the California Trial Court Delay Reduction Act (Government Code §68600, et seq.), the Court adopts the following rules.

The goal of the Court is to dispose of the cases subject to the Trial Court Delay Reduction Act within the standards for disposition adopted by the Judicial Council.

In order to achieve timely resolution of general civil actions, the Court will actively manage and supervise the pace of litigation from the date of the filing of the action to its final disposition.

Upon the initial filing of a civil action or proceeding, other than juvenile, probate, family law domestic violence, or civil harassment, the Clerk shall set the matter for a first case management conference on the case management calendar closest to, but not less than 135 days from the date of filing. The clerk shall issue a notice of case management conference with the summons. The plaintiff shall serve a copy of the notice of case management conference along with the summons and complaint.

(Eff. 01/01/09)

3.2 EXEMPTION FROM TRIAL DELAY REDUCTION

A request to exempt a case from the Delay Reduction Rules shall be by written motion, supported by declaration showing good cause. A stipulation does not establish good cause.

(Eff. 01/01/09)

3.3 PERIODS OF CASE PROGRESSION

In order to dispose of cases within the legislative standards, the Court adopts the following time periods for progression of all cases:

(a) Service of the complaint within 60 days of filing.

(b) Service of responsive pleading within 30 days after service of the complaint.

(c) Discovery to commence at the earliest practicable date.

(d) First case management conference to be held approximately 135 days after filing of a complaint.

(e) Stipulated extensions of time as provided in Government Code 68616 shall be in writing and filed with the Clerk. Any other extensions shall only be after a written motion, supported by a declaration of good cause.

(Eff. 01/01/09)

3.4 CASE MANAGEMENT STATEMENT

All parties taking part in a case management conference must submit a completed Case Management Statement before the case management conference pursuant to California Rules of Court 3.725. Judicial Council form CM-110.

(Eff. 01/01/09)

3.5 PARTICIPATION IN CONFERENCE

Case Management Conferences are heard on the second and fourth Fridays of the month at 8:30 a.m. Counsel for each party, and each party not represented by counsel, shall attend the Case Management Conference. Appearance at the Case Management Conference may be made in person or telephonically via Court Call (1-800-88COURT)

(Eff. 01/01/09)

3.6 SANCTIONS

The Court may impose any and all sanctions allowed by law upon any party or counsel who fails to participate in the Case Management Conference or who otherwise impedes the Trial Delay Reduction Rules.

(Eff. 01/01/09)

ALTERNATIVE DISPUTE RESOLUTION (ADR)

3.7 MEDIATION/ARBITRATION

(a) The Court enthusiastically supports ADR, and this Court will make every effort to see that any case has the opportunity to go to mediation, arbitration or a settlement conference.

(b) Counsel for the parties will be given the opportunity to select a private mediator of their choice.

(c) The Clerk's office maintains an ADR resource file with the names, curriculum vitae and charges of local mediators and arbitrators as well as other ADR material.

(d) The Court recognizes that not all litigants or their counsel reside in Sierra County, and it may be more expeditious and economical to retain a private mediator or arbitrator from another area more convenient to the parties or their counsel.

(e) Subsequent to the date scheduled for the mediation/arbitration, there will be a follow-up Case Management Conference to confirm that the mediation/arbitration went forward.

(f) If the mediation/arbitration results in the resolution of the dispute, counsel will not be required to appear at the follow-up Case Management Conference but are to notify the Court of the resolution of the dispute.

(Eff. 01/01/09)

3.8 SETTLEMENT CONFERENCES

(a) The Court will schedule a mandatory settlement conference for all cases.

(b) All parties, as well as their agents with authority to settle, will attend the mandatory settlement conference.

(c) Failure of a party to attend, or failure of an agent with authority to attend a settlement conference, may result in sanctions imposed by the Court.

(d) No telephone appearance will be allowed without prior approval by the Court, and will only be allowed under extraordinary circumstances.

(e) The parties shall submit a settlement brief not to exceed 5 pages no later than 5 p.m. on Friday the week before the settlement conference. A copy of the settlement brief shall be served upon the opposing counsel.

(Eff. 01/01/09)

RULE 4. CIVIL TRIALS

4.1 TRIAL SETTINGS

The trial date shall be determined by the Court, with due consideration for the convenience of the parties.

(Eff. 01/01/09)

RULE 5. CRIMINAL RULES

5.1 PRETRIAL MOTIONS

(a) All statutory and Rules of Court procedure control, and the Court hereby incorporates by reference the requirements of California Rules of Court, Rule 4.111, pertaining to the making and timing of pretrial motions and opposition thereto, in Superior Court.

(b) In the event that the moving papers are not timely filed for the assigned hearing date without good cause demonstrated, the motion may be deemed waived by the moving party.

(c) If any authority other than California cases, statutes, constitutional provisions or State or local rules is cited in any motion or memorandum of points and authorities, a copy shall be attached to the papers in which the authorities are cited and tabbed as exhibits. If a California case is cited before the time it is published in the Advance Sheets of the Official Reports, a copy of that case shall also be attached and tabbed.

(Eff. 01/01/09)

5.2 CRIMINAL DISCOVERY

Discovery in criminal actions is reciprocal in nature and is governed by Penal Code §§ 1054 et seq. There shall be a standing order in each criminal action requiring all parties and their attorneys to comply with Penal Code §§ 1054 et seq. The order is deemed to have been made and communicated to all counsel at the time of arraignment.

Before a party may seek Court enforcement of any of the disclosures required by law, the party shall make an informal request of opposing counsel for the desired materials and information in the manner required by Penal Code § 1054.5(b). Failure to make such request shall be grounds for denial of a discovery motion. Informal requests should be presented to opposing counsel in writing.

Motions for discovery shall be focused upon specific items which remain in dispute after presentation of informal requests. "Boilerplate" discovery motions are disfavored. Counsel shall meet and confer in a good faith effort to resolve or narrow the disputed issues before the hearing of any discovery motion.

(Eff. 01/01/09)

5.3 CONTINUANCE OF CASES SET FOR TRIAL

Motions to continue the trial of a criminal case are disfavored and shall be denied unless the moving party, pursuant to Penal Code § 1050, establishes that the interests of justice require a continuance.

(Eff. 01/01/09)

RULE 6. FAMILY LAW

6.1 GENERAL INFORMATION

These Rules apply to all matters related to the Family Law Act, the Uniform Parentage Act, the Domestic Violence Prevention Act, and the Uniform Child Custody Jurisdiction Act.

(Eff. 01/01/09)

6.2 MEDIATION

Parents who are not in agreement regarding custody and visitation in the matter before the Court will be required to attend mediation in an effort to resolve the dispute. Generally, this will happen before any Court orders are made; the Court may make temporary orders where necessary, pending further order of the Court to be made at a scheduled hearing. The purpose of mediation is to develop a custody and time-sharing agreement which is in the child(ren)'s best interest.

(a) Who May Attend Mediation. Generally, the only persons in attendance at a mediation session are the two parents and the mediator. However, the mediator has discretion to allow other person(s) to participate in the mediation process. When visitation issues arise between persons other than the parents (such as grandparents or step-parents), the persons attending mediation shall be determined by the mediator.

(b) Conduct of Mediation. Mediation proceedings shall beheld in private and are confidential. All verbal communications from the parties to the mediator shall be deemed to be confidential information, not to be discussed unless such information impacts issues of safety to the parties or the children.

(c) Ex Parte Communications. The mediator will not initiate ex parte communication with the Judge regarding a particular case except where there are questions regarding procedure in that case. If the mediator finds it necessary to discuss substantive issues with the Judge, the mediator shall so inform each of the parties of the communication.

(Eff. 01/01/09)

6.3 CONTESTED CASES

Following mediation, if there are still unresolved issues regarding custody and visitation, the Court may schedule a hearing. The Court may order a custody evaluation before hearing the case. Following a hearing, the Court may make temporary orders pending the completion of a custody evaluation. The parties will be ordered to pay for the cost of the custody evaluation.

The Court may close the courtroom to allow only parties and necessary persons in certain custody and visitation proceedings where it would not be in the best interest of the children to have their issues heard in public.

(Eff. 01/01/09)

6.4 CUSTODY EVALUATION

If a custody evaluation is ordered by the Court, the Clerk will inform Family Court Services for assignment of a child custody evaluator. The parties or their attorneys will be informed of the assignment of the evaluator by written notice.

(a) Challenge of Evaluator. If a person wishes to change the assignment of the child custody evaluator, he/she should do so by contacting the head of the Family Court Services Department who will make a determination regarding the request. If such a request for a change of evaluator is made, the request must be made within 10 calendar days of receiving the notice of assignment of evaluator from the Family Court Services Department.

(b) Evaluation Process. The child custody evaluator will contact the parties directly to request information to begin the process. The parties will respond promptly; any delay in response may create delays in completing the evaluation and thus delay resolution of the custody dispute.

(c) Ex Parte Communications. The child custody evaluator will not conduct ex parte communication with the Judge regarding a particular case except where there are questions regarding procedure in that case. If any substantive issues are discussed with the Judge, the evaluator shall so inform each of the parties of the communication.

(d) Evaluation Report. A Court date will be set to receive the report of the child custody evaluator. The report will be sent to the Court, the parties, and their attorneys prior to that date. The parties may stipulate to accept the recommendations of the child custody evaluator, or the Court may set the matter for a contested hearing.

(e) Payment for Custody Evaluation. Both parties will be referred to the County Treasurer's office to set up payment arrangements for the custody evaluation. The court will periodically review the costs incurred in performing the custody evaluation and will set the custody evaluation fee accordingly. If a party should fail to set up payment arrangements, or should fail to make periodic payments for the custody evaluation, then the custody evaluator may unilaterally cancel the custody evaluation. In such event, the custody hearing may go forward without the custody evaluation, and the court may take into consideration a

party's non-compliance with the payment arrangements.

(Eff. 01/01/09)

6.5 CHILD AND SPOUSAL SUPPORT / INCOME AND EXPENSE DECLARATION

Within 30 days of the hearing or trial, a current Income and Expense Declaration must be filed by each party where support is at issue. If current facts are temporary, both the actual current facts and estimated prospective facts may be shows if properly identified. If attorney's fees and/or costs are requested, the paragraph pertaining to attorney's fees must be completed.

Wage earners must attach legible copies of their paycheck stubs for the most recent two months. In the event no paycheck stubs are available, other appropriate documentation must be attached.

(Eff. 01/01/09)

6.6 TAX RETURN

The parties may be asked to provide legible copies of their last three state and federal income tax returns, including all attachments. Self-employed parties shall bring their most recent profit and loss statements, balance sheets, quarterly sales tax reports, the last filed tax return, or similar documentation evidencing income from all sources.

(Eff. 01/01/09)

6.7 SUPPORT MODIFICATIONS

Every motion to modify support shall set forth the date of the prior order and the amount of the prior order.

At a hearing on modification of spousal support, the supported spouse shall be prepared to give evidence of his or her compliance with Family Code by demonstrating progress toward becoming self-sufficient.

(Eff. 01/01/09)

6.8 FAMILY LAW FACILITATOR / DUTIES OF FACILITATOR

The Family Law Facilitator shall provide those services set forth in Family Code § 10004.

(Eff. 01/01/09)

6.9 LAW AND MOTION

Unless otherwise assigned by the Clerk, Law and Motion hearings, where parties are represented by counsel, are held on the second and fourth Friday of the month at 10 a.m. or Wednesday at 1:30 p.m.

The papers of the moving party shall be filed and served at least 21 days prior to the time of the hearing. Proof of service shall be filed prior to the date of the hearing.

(Eff. 01/01/09)

6.10 ORDER SHORTENING TIME

An order shortening time for service of the notice of a hearing will not be granted if the request for that order is not accompanied by a supporting declaration under penalty of perjury which states the need for that order.

(Eff. 01/01/09)

6.11 FAMILY LAW COMMISSIONER

The Family Law Commissioner shall hear all Title IV-D support cases, support enforcement, and other family law matters as assigned. These cases will be heard on the second and fourth Friday at 1:30 p.m.

(Eff. 01/01/09)

6.12 RESPONSIVE PLEADINGS

Unless an order shortening time has been issued, responsive papers shall be served and filed at least 10 days prior to the date of the hearing.

(Eff. 01/01/09)

6.13 HEARINGS

The attorneys and parties shall be present in Court when their case is called for hearing unless they have previously checked in with the Court clerk and requested the matter be passed for settlement discussion outside the Courtroom.

Failure of the moving attorney or moving self-represented party to be present at the hearing or to inform the Courtroom Clerk of his or her presence shall result in the matter being removed from the calendar. If the responding party has appeared, but the moving party has not, attorney's fees and costs may be awarded to the appearing party. In the event the responding party fails to appear, the Court may continue the matter and award attorney's fees or enter an order on the pleadings and/or the testimony of the moving party.

If the attorney or client is unable to be present at the time of the hearing, the Court and opposing party shall be notified immediately by telephone of the reasons for and extent of the delay.

(Eff. 01/01/09)

6.14 EX PARTE ORDERS

(a) The moving attorney or moving self-represented party must give notice of any ex parte applications to the opposing attorney or self-represented party in accordance with California Rules of Court § 379; "notice shall be given no later than 10:00 A.M. on the Court day before the ex parte appearance, absent a showing of exceptional circumstances." A Declaration re: Notice of Ex Parte Application for Orders shall be filed with the Court prior to, or at the time of, the hearing.

(b) An ex parte order for exclusive use of a vehicle will not be granted unless the Declaration demonstrates that the opposing party has suitable transportation available, or requires no such transportation, or other good cause for such an order.

(c) An ex parte order removing a party from a residence will not be issued without supporting declarations as required by law.

(Eff. 01/01/09)

6.15 ORDERS AFTER HEARING

Counsel should come to a hearing with a written Order After Hearing (OAH), prepared to present it to the Court at the conclusion of the hearing. If the Court makes decisions that require the further drafting of the OAH, the Court shall designate one counsel to prepare the written OAH. This draft OAH should be submitted to opposing counsel for approval as to form and forwarded to the Court. Faxed OAH's are acceptable. All OAH's must be submitted to the Court within 14 days following the hearing; failure to do so may result in the imposition of sanctions. If opposing counsel does not respond to the request for approval as to form within five days, the proposed OAH may be submitted directly the Court with an attached declaration indicating counsel's attempts at notifying opposing counsel.

(Eff. 01/01/09)

6.16 DEFAULT OR UNCONTESTED JUDGMENTS

(a) Judgment by Default / Notice and Acknowledgment of Receipt. Unless the Court orders otherwise, a default will not be entered based on a Notice of Acknowledgment of Receipt signed by a person other than the party to whom it is directed.

(b) Child Support, Spousal Support or Attorney's Fees Awards. No award of child support, spousal support or attorney's fees will be granted unless there is either an attached written agreement between the parties settling those issues or there is sufficient information on which the Court may base an order, including a fully completed and executed Income and Expense Declaration (with information on both parties where available.

(c) Community and/or Separate Property. No division of community property (assets or debts) or confirmation of separate property will be ordered unless there is either an attached written agreement between the parties settling those issues, or there is a completed Property Declaration attached to and served with the Request to Enter Default.

(d) Visitation. Where the judgment is taken by default, if there is no attached written agreement of parties concerning custody and visitation, and either supervised visitation or a denial of visitation is requested, an attached factual Declaration under penalty

of perjury shall be submitted with the judgment and shall set forth the following:

(1) Where the party is seeking to deny visitation between the child(ren) and the defaulting party: The specific reasons visitation should be denied; the last time there was visitation between the child(ren) and the defaulting party; and whether the whereabouts of the defaulting party is known, and, if so, his or her address.

(2) Where the party is seeking supervised visitation between the child(ren) and the defaulting party: The reasons such visitation should occur; the person or agency to do the supervision; and how the supervision is to be paid for.

(3) Other information: The declaration shall inform the Court when the parties separated, who has been the primary caretaker of the child(ren) during the last 6 months and the extent of contact between the child(ren) and the non-caretaker parent during that time.

The declaration shall be mailed to the defaulting party with the Request to Enter Default, and proof of mailing shall be filed with the Court.

(Eff. 01/01/09)

6.17 SUBMISSION OF AGREEMENTS

If the parties have reached an agreement resolving all issues in the case, either party may present the signed written agreement to the Court

(Eff. 01/01/09)

6.18 TRIAL

(a) Settlement Conference. All contested dissolutions will be set for a settlement conference. The parties and the attorneys shall attend the conference.

(b) Settlement Conference Statement / Time Requirements. At least 10 days before the settlement conference, or 15 days if service is by mail, each party or their attorney shall prepare, file and serve on the other party or the opposing attorney, a Settlement Conference Statement with contents as indicated below.

Caption. The caption shall contain the times and dates of the settlement conference and the Trial.

Income and Expense Declaration. A current signed and dated Income and Expense Declaration shall be prepared on the Judicial Council form. Copies of current pay stubs or other income verification shall be attached.

Community Property (assets and liabilities). A current signed and dated Schedule of Assets and Debts shall be prepared on Judicial Council forms. The Settlement Conference Statement shall indicate the claimed values of the assets and the proposal for division. The Statement should also include a proposed division of the community property debts.

Separate Property. Where one party claims that an asset is his or her separate property, and if the other party has not stipulated to that fact, the Statement should include a description of the assets, the date of acquisition, the encumbrance at the time of acquisition, the present encumbrance and a statement as to how the title is held.

Support. Each party shall set forth specific proposals regarding child and/or spousal support.

Statement of Facts and Legal Arguments. On any contested legal issue, the Statement should include a recitation of the relevant facts and a brief discussion of the relevant law.

(Eff. 01/01/09)

6.19 CONDUCT OF TRIAL

The trial will be conducted in accordance with rules and procedures for all other civil trials.

(Eff. 01/01/09)

RULE 7. JUVENILE LAW

DEPENDENCY PROCEEDINGS

7.1 ADOPTION OF COMPETENCY STANDARD

This rule, Rule 7 of the Local Rules of Sierra County Superior Court, is adopted to comply with Rule 1438(a) of the California Rules of Court.

(Eff. 01/01/09)

7.2 GENERAL COMPETENCY REQUIREMENT

(a) All attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence set forth in these rules. These rules are applicable to attorneys representing public agencies, attorneys employed by public agencies and attorneys appointed by the Court to represent any party in a juvenile dependency proceeding.

(b) Every party in a dependency proceeding who is represented by counsel is entitled to competent counsel. [CRC 1438(b)] "Competent counsel" means a state bar member in good standing who is trained in the juvenile dependency law, and who demonstrates adequate forensic skills, knowledge and comprehension of the substantive law of juvenile dependency, the purposes and goals of dependency proceedings, and the procedures for filing extraordinary writ petitions. [CRC 1438(b)(1)]

(c) Attorneys are expected to meet regularly with clients, including children; contact social workers and other professionals associated with the client's case; work with other counsel and the Court to resolve disputed issues without hearing; and adhere to mandated timelines. The child's attorney is not, however, required to assume the responsibilities of a social worker or to perform services for the child unrelated to legal representation. [CRC 1438(b)(4)]

(d) All attorneys retained, assigned or appointed are required to adhere to the timelines and the procedures stated elsewhere in these rules or as provided by Statute of California Court Rules of Court for settlements, discovery, protocols and other issues related to contested matters.

(Eff. 01/01/09)

7.3 MINIMUM STANDARDS OF EDUCATION AND TRAINING; WORKLOADS

(a) Each attorney appointed in a dependency matter before the Juvenile Court shall complete the following minimum educational and training requirements:

(1) Eight hours of education and training in juvenile dependency law, covering such areas as child abuse and neglect; child development; domestic violence; or,

(2) Previous experience in dependency proceedings as determined by the presiding Juvenile Judge in which the attorney has demonstrated competence. A Certificate of Competency may be obtained from the Court Clerk. (Appendix A)

(b) A Certificate of Competency shall be completed by the attorney of record for the dependency matter and submitted to the Court within 20 days of his or her first appearance in a dependency matter.

(c) Failure to submit a Certificate of Competency will cause the Court to notify the attorney that his or her right to practice in dependency proceedings is revoked. The attorney shall have 30 days from mailing of the notice to submit a Certificate of Competency. If the attorney, after such notice, fails to submit a Certificate of Competency, the Court shall issue an order prohibiting the attorney from practicing in dependency proceedings.

(d) The attorney for a child must have a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code § 317(e) and the California Rules of Court.

(Eff. 01/01/09)

7.4 APPOINTMENTS

(a) The Court will only appoint counsel who have been certified by the Court to represent parents or children in the Juvenile Dependency Court.

(b) Billing shall be forwarded to the Court with appropriate documentation for approval.

(Eff. 01/01/09)

7.5 STANDARDS OF REPRESENTATION

Attorneys appearing in juvenile dependency proceedings shall meet the following minimum standards of representation:

(a) The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the Court reports filed in support thereof. This shall include conducting a comprehensive interview with the client to ascertain his or her knowledge of, and/or involvement in, the matters alleged or reported. The attorney shall contact social workers and other professionals associated with the case to ascertain that allegations and/or reports are supported by accurate facts and reliable information.

(b) The attorney is not required to meet, either directly or though an agent (e.g. an investigator), with a client who is incarcerated or committed out of Sierra County. If the attorney believes, however, that such contact is essential to representing the interests of the client, application may be made to the Court. The attorney shall advise the client of the possible course of action and the risks and benefits of each. This shall include advising the client of the risk and benefits of resolving disputed matters without the necessity of a hearing and of the necessity for adhering to Court-mandated timelines.

(Eff. 01/01/09)

7.6 PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

(a) Any party to a Juvenile Court proceeding may lodge a written complaint with the Court concerning the performance of his or her appointed attorney in a Juvenile Court proceeding. In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged on the child's behalf by the social worker, a caretaker relative or a foster parent.

(b) Upon receipt of a written complaint, the Court shall notify the attorney in question of the complaint, shall provide the attorney with a copy of the complaint, and shall give the attorney 15 days from the date of the notice to respond to the complaint in writing.

(c) After response has been filed by the attorney, or the time for the submission of a response has passed, the Court shall review the complaint and the response, if any, to determine whether the attorney acted contrary to rules or policies or has acted incompetently. The Court may ask the complainant or the attorney for additional information prior to making a determination on the complaint.

(d) If, after reviewing the complaint, the response, and any additional information, the Court finds that the attorney acted contrary to the rules or policies of the Court or incompetently, the Court shall take appropriate action.

(e) The Court shall notify the attorney and complaining party, either in writing or by oral ruling at a closed hearing, of its determination of the complaint. The Court's determination will be final.

(Eff. 01/01/09)

7.7 PROCEDURES FOR INFORMING THE COURT OF THE INTERESTS OF A DEPENDENT CHILD

(a) At any time during the pendency of a juvenile dependency proceeding, any interested person may notify the Court that a minor who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum.

(b) Notice to the Court may be given by the filing of Judicial Council form JV-180 or by filing of a declaration. The person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued; the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected; and the nature of the proceedings being contemplated or conducted there.

(c) If the Court determines that further action on behalf of the child is required, the Court shall:

(1) Authorize the minor's attorney to pursue the matter on the child's behalf;

(2) Appoint an attorney for the child if the child is unrepresented;

(3) Notice a joinder hearing pursuant to Welf & I C § 632 compelling the responsible agency to report to the Court with respect to whether it has carried out its statutory duties with respect to the child;

(4) Appoint a guardian ad litem for the child for the purposes of initiating or pursuing appropriate action in the other forum(s);

(5) Take any other action the Court may deem necessary or appropriate to protect the welfare, interest and rights of the child.

(Eff. 01/01/09)

7.8 DISCOVERY

(a) The discovery provisions of CRC 1420 are hereby adopted and incorporated.

(b) Pre-hearing discovery shall be conducted informally. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties involved in the litigation.

(c) Formal Discovery. Only after all informal means have been exhausted may a party petition the Court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons informal discovery was not adequate to secure such information. The motion shall be served on all parties at least 5 judicial days before the hearing date. The date for the hearing shall be obtained from the clerk.

(d) Civil Discovery. In order to coordinate the logistics of discovery in dependency cases, there shall be no depositions, interrogatories, subpoenas of juvenile records or any other similar types of civil discovery without approval of a Judge of the Juvenile Court upon noticed motion.

(e) Case Records and Reports (CRC 1420). In contested proceedings, the social worker's narratives and other relevant case records shall be made available to all counsel at least 10 calendar days before the hearing and any updated records 2 calendar days before the hearing. In all other cases, such documents shall be made available at least 2 calendar days prior to the hearing.

(f) Upon timely request, parents, guardians and de facto parents shall disclose to all other parties such non-privileged material and information within the parent's, guardian's, or de facto parent's control that is relevant.

(Eff. 01/01/09)

7.9 PRESENTATION OF EVIDENCE

Social study reports prepared by Children's Services shall be made available to all counsel before the hearing in accordance with the following time limitations unless otherwise ordered by the Court:

(a) Jurisdictional and/or dispositional reports are due at least 48 hours before the hearing.

(b) Review of dependency status and status review reports are due at least 10 calendar days before the hearing.

(c) All other reports shall be due a reasonable number of days before the hearing but in no event less than 48 hours before the hearing.

(d) All proposed modifications to the petition shall be exchanged 48 hours prior to the jurisdiction hearing.

(e) If any discovery, reports or proposed modifications have not been made available to all counsel, then any affected party or the Court may request a continuance of the hearing to the extent permitted by law.

(f) The names of any experts to be called by any party and copies of their reports (if not part of a social study report prepared by Children's Services) shall be provided to all counsel at least 10 days before the hearing unless a shorted time is ordered by the Court.

(Eff. 01/01/09)

7.10 SETTLEMENT CONFERENCES

(a) A settlement conference shall be calendared and held prior to every contested hearing unless deemed unnecessary by the judicial officer setting the contested hearing.

(b) The attorneys and all parties shall be present at the settlement conference unless excused by the Court. All excused parties shall be readily available either in person or by telephone at the direction of their attorneys. A representative of Children's Services with authority to settle cases shall be present at the settlement conference.

(c) Whenever possible, the Department of Child Protective Services shall prepare and provide to all parties a proposed Stipulation to Jurisdiction and Disposition to assist in resolving the case.

(Eff. 01/01/09)

7.11 TIMELINES

Attorneys for parties are required to adhere to the statutory timelines for all hearings. Time waivers will be accepted and continuances granted only on a showing of good cause.

(a) Detention Hearings. Detention Hearings shall be heard no later than the end of the next Court day after a petition has been filed (Welf & I C § 315; CRC 1440)

(b) Jurisdiction Hearing. If the child is not detained, the hearing on the petition shall be begun within 30 calendar days from the date the petition was filed. If the child is detained, the hearing on the petition shall be begun within 15 Court days from the date of the detention order. (Welf & I C § 334; CRC 1447)

(c) Disposition Hearing. If the child is detained, the hearing on disposition must be begun within 10 days from the date the petition was sustained. If the child is not detained, the disposition hearing shall be begun no later than 30 calendar days after jurisdiction is found. (Welf & I C § 358; CRC 1451)

(d) Six-Month Review. The Court is required to review the status of every dependent child within six months of the declaration of dependency and at least every 6 months thereafter. (Welf & I C §§ 364, 366, 366.21; CRC 1460)

(e) Twelve-Month Review. The Court is required to review the status of every child who has been removed from the custody of a parent or guardian within 12 months of the declaration of dependency. (Welf & I C § 366.21; CRC 1461)

(f) Eighteen-Month Review. If the child is not returned at the 12-month review, the Court shall conduct a review no later than 18 months from the date of the original detention. (Welf & I C §§ 366.21, 366.22; CRC 1462)

(g) Notice of Intent to File Writ Petition. A Notice of Intent to file a petition for extraordinary writ shall be filed within 7 days of the date of the order setting a hearing under Welf & I C § 366.26, with an extension of 5 days if the party received Notice of the Order only by mail. (CRC 39.1B)

(h) Petition for Writ. A petition seeking writ review of orders setting a hearing under W&I Code shall be served and filed within 10 days after the filing of the record in the reviewing Court. (CRC 39.1B)

(i) Response to Writ Petition. Any response to a writ petition shall be served and filed within 10 days after the filing of the writ petition or within 10 days of receiving a request for a response from the reviewing Court. (CRC 39.1B)

(j) Selection Hearing. Selection hearing for permanent plan shall begin within 120 days of the review at which reunification services are terminated and a hearing under Welf & I C § 366.26 ordered. (Welf & I C §§ 366.31, 399.22; CRC 1461, 1462)

(k) Notice of Appeal. A Notice of Appeal shall be filed within 60 days after the rendition of the judgment. (CRC 39)

(Eff. 01/01/09)

INFRACTION PROCEEDINGS

When juveniles are issued citations for infractions, they will be ordered to appear in juvenile court.

(Eff. 01/01/09)

7.12 OFFENSES INCLUDED

Infractions include those offenses defined in Penal Code §§ 19.6 and 19.8.

(Eff. 01/01/09)

7.13 APPEARANCE

The Juvenile Court will require the appearance of the juvenile and at least one parent. For good cause shown, the parent's appearance and/or the juvenile's appearance may be excused.

(Eff. 01/01/09)

RULE 8. RESERVED

RULE 9. RESERVED

RULE 10. MISCELLANEOUS

10.1 COMMUNICATION

Until the court has an operational case management system capable of automatically coordinating domestic violence orders, the court shall, whenever possible, communicate and exchange information with each other prior to issuing protective orders and child custody and visitation orders to determine if any such orders have already been issued as to the same parties or children in any other department.

(Eff. 01/01/09)

10.2 GUARDIANSHIP INVESTIGATIONS

Upon the filing of a Petition for guardianship, the Court shall order the appropriate level of guardianship investigation. Petitioner shall be required to pay for the actual cost of the guardianship investigation.

(Eff. 01/01/09)

10.3 APPELLATE DIVISION

All appeals to the Sierra County Superior Court Appellate Division will be processed pursuant to Rule 10 of the Lassen County Superior Court local rules.

(Eff. 01/01/09)

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Siskiyou County
Probate Rules

Effective July 1, 2009

CHAPTER 15
PROBATE RULES

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CHAPTER 15
PROBATE RULES

15.01 CAPTION OF PROBATE DOCUMENTS

If a probate pleading or other probate document is not filed on a Judicial Council form, the caption must include a reference to the statutory provision under which the matter is filed. If, in the pending proceeding, any part of an estate is to be distributed to a trust, the caption of the pleading must so indicate.

[Rule 15.01 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.02 Settings And Assignments; Continuances

A. Settings and Assignments

(1) At the time of its filing, every pleading that requires a hearing will be set on the regular calendar for that type of proceeding. The conservatorship, guardianship and probate calendar is heard on Tuesdays at 10 am. Because the day and hour reserved for these calendars may change from time-to-time, counsel are advised to consult the clerk before requesting a specific setting.

(2) The attorney or self-represented party who files the pleading may select the initial hearing date, as long as the setting permits sufficient time for service of appropriate notice.

(3) Any request for an earlier setting than would normally be allowed must be presented to the Court pursuant to the Local Rules governing orders shortening time. Note: mere convenience or inconvenience of counsel is insufficient justification for such request.

B. Continuances

(1) On the call of the calendar, any regularly-set matter that is found to be "not ready for hearing" will be continued until a future date, to be determined at the Court's discretion. A matter is considered to be not ready if the pleading, notice of hearing, or documents purporting to cure discrepancies therein are not filed by the continuance date. If the matter is not ready by the time of any second continuance, it may be ordered off-calendar or denied without prejudice, unless an application for a further continuance, made upon the personal appearance in court of counsel or self-represented party is granted.

(2) If a proceeding has been properly noticed for its initial hearing, new notice is not required for any continuance unless the Court specifically orders such notice.

(3) If an oral objection to any pleading is presented to the Court at the hearing thereon, the Court may continue the matter to allow for the filing of written objections, and for giving notice thereof to the petitioner. Unless otherwise ordered, the Court will not consider an objection unless it is in writing, and is filed and served at least ten (10) days prior to the date of the continued hearing.

[Rule 15.02 adopted effective July 1, 1996; amended effective July 1, 2009.]

15.03 Filing Of Documents; And Review Prior To Hearing

A. Filing Documents for Calendared Matters

Except for good cause, all documents in support of a pleading must be filed with the clerk of the Court no later than five (5) court days before the calendared hearing thereon. This Rule applies, but is not limited, to affidavits of publication, proofs of subscribing witnesses, waivers of account, receipts, inventories, reappraisals for sale, agreements for in-kind distributions, proposed orders, and similar papers. At the Court's discretion, documents that are not filed in a timely manner may not be considered before or during the hearing; and the matter may be continued, denied without prejudice, or ordered off-calendar.

B. Inquiries re Status Prior to Hearing

Counsel may contact the Court's probate specialist two (2) court days prior to the hearing, to determine if the pleading and supporting documents have been reviewed, and if additional documents or explanations will be required.

[Rule 15.03 adopted July 1, 1996; amended effective July 1, 2009.]

15.04 Reserved

[Rule 15.04 adopted effective July 1, 1996; deleted effective July 1, 2009.]

15.05 GENERAL NOTICE REQUIREMENTS

A. Notices Generally

These Rules do not increase or reduce the statutory notice requirements with respect to probate matters brought before the Court.

B. Burden of Proving Proper Notice

It is the responsibility of the petitioner or his or her attorney, and not the responsibility of the Court Clerk, to give notice of any proceeding requiring notice, or cause it to be given; and also to file the proper proof of service of such notice.

C. Service of the Petition in Addition to Notice

When notice of any petition or other application is served on a person requesting special notice, or if the petition is for approval of the accounting of a testamentary trustee, then a complete copy of the petition, along with any supporting papers, must be served with each notice of hearing. If the fiduciary or attorney is requesting extraordinary fees or compensation (i.e., fees or compensation other than the "ordinary" fees and compensation authorized by Probate Code §10800 and §10810), notice of hearing and a copy of the petition must be served on all interested parties. When service of a copy of the petition is required, the proof of service of notice must also show service of the copy.

D. Minimum Notice Requirement

When the Probate Code requires that a matter be set for noticed hearing, notice may not be shortened to less than ten (10) days.

E. Posting of Notice by the Clerk

When posting of notice by the clerk is required, the party who requests the posting must do so in writing, and must provide the court clerk with an extra copy of the notice.

[Rule 15.05 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.06 PROBATE ORDERS AND DECREES; EX PARTE APPLICATIONS; NUNC PRO TUNC CORRECTION OF CLERICAL ERROR

A. Orders and Decrees

(1) *Form of Orders.* Probate orders or decrees must be prepared by counsel or the self-represented petitioner, unless otherwise ordered by the Court. All probate orders or decrees must be complete in themselves (i.e., they must be worded so that their general effect can be determined without reference to the petition on which they are based). Orders and decrees must set forth the date of hearing; the Court's findings; the relief granted; and the names of persons, and descriptions of property or amounts of money, that are affected by the order, all with the same particularity as is required of judgments in civil matters.

Some printed forms of orders or decrees are designed to permit the attachment of supplemental material; if such form is utilized, attachments will be permitted if the judicial signature appears at the end of the last attachment, and the form itself includes the information that the document is executed at the end of the last attachment.

(2) *Judicial Signature*

The place provided for the judicial signature must appear at the end of the order or judgment. No attachment, exhibit, or rider is permitted after the judicial signature.

The signature line must not appear on a page by itself, and pagination of documents must be adjusted accordingly.

The signature line for the judicial officer must be in the following format:

"Date:

_____

Judge/Judge Pro Tempore

Superior Court"

(3) *Submitting Proposed Orders.* If the parties wish to obtain formal orders on the date that the matter is calendared for hearing, then the proposed orders must be submitted to the clerk at least five (5) court days before the hearing.

(4) *Orders for Continuing Payments.* All proposed orders for continuing payments must provide that the payments will commence on a date certain and will continue until a) a date certain or b) for a specified period. The Court will not make orders that require continuing payments to run "until further order".

(5) *Orders Distributing Estate to Trustee.* Orders calling for distribution of estate assets to the trustee of a testamentary trust must set forth all provisions of the will or codicil relating to the trust or trustees, in a manner that will give effect to existing conditions at the time distribution is ordered. Pertinent provisions must be set forth in the present tense and third person.

B. Ex Parte Applications for Orders

(1) *In General.* Applications for orders may be made ex parte unless a statute or Rule requires notice; and must be made as set forth in Local Rule 3.03.

(2) *Form of Order.* Except for form petitions and orders approved by the Judicial Council or this Court, all applications for ex parte orders must be accompanied by a separate proposed order, complete in itself. It is not sufficient for such order to provide merely that the application has been granted.

(3) *Special Notice.* All applications for ex parte orders must contain an allegation that no special notice has been requested, or an allegation that any requested special notice has been waived (with identification of the persons requesting special notice). Any waiver of special notice must be filed with the application.

(4) *Sales of Property.* Ex parte petitions for orders for sale of stock or personal property must allege whether or not the property is specifically devised. If so, the consent of the specific devisee must accompany the petition.

C. Nunc Pro Tunc Correction of Clerical Errors

(1) *In General.* If, through any inadvertence, the minute order or the signed decree fails to state the order that was actually made by the Court, and such inadvertence is brought to the attention of the Court by affidavit or duly-executed declaration pursuant to Code of Civil Procedure §473, then the Court will, on its own motion, make a nunc pro tunc order correcting the mistake.

(2) *Form of The Proposed Nunc Pro Tunc Order.* The proposed nunc pro tunc order must not take the form of an amended order, and must be in substantially the following form:

"Upon consideration of the affidavit or declaration of [name] to correct a clerical error, the [identity of the order to be corrected, giving the title and date thereof] is corrected, on the Court's own motion, by striking the following [here set out the matter to be eliminated] and by inserting in lieu thereof the following: [here set out the correct matter]. This order is entered nunc pro tunc as of [here insert the date the incorrect order was signed]."

To prevent further errors, the complete clause or sentence in which the error occurs should be stricken from the original order or decree, even if only one word or figure therein requires correction. Reference should not be made to the page and line number of the corrected language.

(3) *Presentation To The Court.* The proposed order must be submitted to the court clerk along with the affidavit or declaration that brings the error to the Court's attention.

(4) *Effect of The Nunc Pro Tunc Order.* The original order will not be physically changed by the clerk, but will be used in connection with the nunc pro tunc order correcting it.

[Rule 15.06 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.07 Provisions Relating To The Appointment Of Executors And Administrators

A. Special Letters

Petitions for special letters of administration will not be granted without prior notice to the surviving spouse, to the person nominated as executor, and to any other person who, after examination of the applicant by the Court, appears to be equitably entitled to notice. In appointing a special administrator, the Court will give preference to any person entitled to letters testamentary or of administration. If it appears that a bona fide contest exists, the Court will consider appointing a neutral person or corporation as special administrator.

B. Public Administrator

The Public Administrator of Siskiyou County is the District Attorney, whose offices are located at 311 Fourth Street, Yreka, California (mailing address P.O. Box 986, Yreka CA 96097). In all cases where it appears the Public Administrator may have priority to serve as personal representative of an estate, notice to the District Attorney must be given.

C. The Petition for Probate

(1) *Allegations Re Heirs and Beneficiaries*. In addition to the required allegations (set forth in Probate Code §8002) in the petition for letters or for appointment, the petition must include the following information:

(a) As to the actual or nominated trustee of a trust that is a beneficiary of the decedent's estate, said trustee must be listed by name and title as a devisee or legatee, and, if a sole trustee is also the personal representative of the estate, the individual beneficiaries of the trust must be listed in the petition and be given notice of the proceedings. [Probate Code §1208.]

(b) When a beneficiary of the estate has died, notice must be given as required by Rule 7.51(e) of the California Rules of Court.

(c) As to contingent heirs, devisees and legatees, all such persons must be listed in the petition for probate or for letters of administration so that each will receive notice by mail of the hearing on the petition. This includes persons provided for in the will offered for probate, but whose legacy has been revoked by a subsequent codicil.

D. Subsequent Petitions for Probate

(1) *Admitting Subsequent Wills and Codicils*. Every will or codicil not specifically mentioned in the original petition must be presented to the Court by way of an amended petition or a second petition, and new notice thereof must be published.

(2) *Noticing Subsequent Petitions*. When a petition for letters testamentary or letters of administration with will annexed ("Letters CTA") is filed after the admission to probate of a will disposing of the same decedent's estate, notice is required just as for the original petition.

E. Proof of Written Will or Codicil

(1) *Attachment to Petition*. When a petition for probate of will and/or codicil is filed, a copy of the document(s) being offered for probate must be attached thereto and marked as an exhibit.

(2) *Proof of Holographic Instrument*. If the will or codicil is handwritten and a photographic copy is attached, then a typewritten copy of the text of the document must be attached as well. Holographic instruments may be proved by an appropriate affidavit or declaration setting forth the foundation upon which the declarant bases his/her statement that the handwriting is the decedent's.

(3) *Proof of Formal Wills*. In uncontested will proceedings, if the attestation clause of the testamentary instrument is signed under penalty of perjury, then the will or codicil is deemed to be self-proving and can be admitted to probate without proof thereof by affidavit or declaration. If the attestation clause is unverified, any proof offered by a subscribing witness must be filed on Judicial Council form DE-131.

F. Bond of Personal Representative

(1) *Effect of Bond Waiver*. If bond has been waived in the will or codicil, or if it is waived by all beneficiaries of the will by way of duly executed and filed waivers of bond, then the fact that bond has been waived must be alleged in the petition.

(2) *Reporting Bond in Interim Accountings*. Every interim account for an estate in which bond has been posted must include a separate paragraph alleging a) the total amount of the posted bond; b) the appraised value of personal property on hand plus the estimated annual income to the estate from real and personal property; and c) a statement concerning any additional bond thereby required. Whenever appropriate, a prayer for increase or decrease of the posted bond must be included in the petition for settlement of the account.

(3) *Bond When Independent Powers Granted*. When the personal representative is granted independent powers to sell real property or to lease it for a term of more than one year, the Court may require a bond that includes the equity value of the real property.

[Rule 15.07 adopted effective July 1, 1996; amended effective July 1, 2009.]

15.08 APPEARANCE OF COUNSEL IN UNCONTESTED MATTERS

A. Required Appearance at Hearing on Guardianship or Conservatorship Petition

The petitioner or the petitioner's attorney must appear at any hearing on a petition for appointment of a guardian or conservator.

B. When Non-Appearance Allowed at Hearing on Petition

(1) Except as otherwise provided by law or these Rules, all verified petitions in probate matters will be deemed submitted without an appearance, except that the attorney or petitioner must appear on a petition for confirmation of sale of either 1) real property, or 2) personal property valued in excess of One Hundred Dollars ($100.00). As used in this Rule, "verified" means verified by the petitioner as set forth in Rule 15.04 hereof.

(2) Before denying any petition where there is no required appearance, the Court, at its discretion, will continue the matter to a future law & motion calendar in order to give the petitioner or counsel an opportunity to appear. If there is no appearance or other response by the petitioner or counsel at the continued hearing, the Court may drop the matter from the calendar. (Note: it is the responsibility of the non-appearing petitioner or counsel to determine whether the matter has been approved or continued.)

[Rule 15.08 adopted July 1, 1996; amended effective July 1, 2001.]

15.09 CONTESTED MATTERS

The Court will hear contested matters at such dates and times as the Court deems appropriate.

[Rule 15.09 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.10 ORDERS FOR FAMILY ALLOWANCE

A. Time of Application

Applications for a family allowance order must be made in a timely manner. As a policy, the Court discourages requests for retroactive (nunc pro tunc) payment of a family allowance.

B. Duration of Order

The duration of an order for family allowance is limited to six months if no inventory and appraisement has been filed, and to one year if an inventory and appraisement has been filed.

C. Estimate of Monthly Income and Expenses

Every petition for a family allowance must set forth estimated monthly income, including receipt of any available government benefits; and if the petition seeks an allowance in excess of $1,000 per month, it must include an itemized estimate of monthly expenses.

[Rule 15.10 adopted July 1, 1996; amended and renumbered effective July 1, 2001.]

15.11 PROBATE LETTERS

A. Form of Letters

Proposed Letters submitted for issuance must be complete in every aspect. Independent powers must be specifically stated, on the face of the Letters or in a referenced attachment; and execution of the oath must include date and place.

B. Re-Issuance of Letters

Re-issuance of original Letters is discouraged, and any request for re-issuance of original Letters must be submitted to the Court in writing and must establish valid justification for the request. (This requirement does not apply to requests for certified copies of Letters).

[Rule 15.11 adopted effective July 1, 2001.]

15.12 Required Matters In A Petition For Final Distribution

A. Required in All Petitions for Final Distribution

In addition to items otherwise required by law, a petition for final distribution must include the following matters, unless set forth in the account and report:

(1) A full and complete description of all assets to be distributed. The description must include all cash on hand, and must indicate whether or not promissory notes are secured or unsecured. If secured, the security interest must be described. Real property must include a complete legal description. Note: descriptions made by reference to the inventory and appraisal are not acceptable.

(2) Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

(3) A computation of the attorney fees and representative commissions being requested, *even if an accounting is waived*. Where an accounting is waived and the statutory compensation is based upon receipts during probate, the method of computation must be set forth, together with an allegation that such receipts have been or will be reported on fiduciary income tax returns for the estate. Applications for compensation for extraordinary services will not be considered unless the caption and prayer of the petition, and the notice re distribution, contain a reference to such application for extraordinary compensation.

(4) A statement regarding payment of all taxes pursuant to Probate Code §9650(b).

(5) An allegation that all legal advertising, bond premiums, probate referee's fees, and costs of administration have been paid. (Note: the final account will not be approved, and neither will a petition to terminate proceedings be granted, unless the Court is satisfied that all costs of administration, including charges for legal advertising, have been paid.)

(6) A schedule of claims showing the name of the claimant, amount claimed, date presented, date allowed, and, if paid, the date of payment.

As to any rejected claims, the date of rejection must be set forth; and the original of the notice of rejection, with affidavit of mailing to the creditor, must be filed.

Even if a claim has not been filed, the Court may approve payment of a debt if the accounting shows that such payment was made in compliance with the requirements of Probate Code §9154. Such approval is discretionary with the Court, and must be justified by appropriate allegations in a verified petition or by testimony in open court. [Estate of Sturm (1988) 201 CA3d 14.]

(7) An itemization of costs for which counsel or the personal representative has been paid or is seeking reimbursement. Ordinary overhead items, including but not limited to costs of duplication of documents, long distance charges, and automobile mileage, are not proper cost items.

(8) A schedule showing the proration, if any, of taxes, fees, and costs.

(9) In all cases where the character of property may affect distribution of the estate, a statement or listing of which assets are separate property and which assets are community property.

(10) If distribution is to be made pursuant to an assignment of interest, then the details of the assignment, including the consideration therefore, shall be set forth in the petition; and the acknowledged assignment shall be filed with the Court.

(11) The names and current addresses of all persons who are affected by the petition; each such person must be identified as an adult or a minor.

(a) If property is to be distributed to a minor, the minor's present age must be indicated.

(b) If a trust is established in which property will be distributed to a beneficiary upon reaching a given age, the petition must allege the present age of the distributee.

(12) If the distribution is to be made to a minor or an incompetent, then facts showing compliance with Probate Code §3300, et seq., must be alleged; alternatively, current certified copies of letters of guardianship or conservatorship of the estate must be filed.

(13) An allegation of compliance with Probate Code §9202 (notice of death to the Director of Health Services); or an allegation that notice is not required because decedent did not receive Medi-Cal services; or an allegation that no claim can be made by the Director of Health Services because decedent a) died before June 28, 1981; b) was under age 65; or c) was survived by a spouse, minor child, or disabled child.

(14) An allegation of compliance with Revenue & Taxation Code §19513, if the estate exceeds $1,000,000 and assets greater than $250,000 are distributable to a non-resident.

(15) A statement that complies with the disclosure requirements of Probate Code §1064(a)(4), or an allegation that no family or affiliate relationship exists between the fiduciary and any agent hired by the fiduciary for probate purposes.

(16) A Schedule of Graduated Filing Fee Information as required by Rule 7.552 or Rule 7.553 of the California Rules of Court.

B. Unequal Distributions; Distributions Against the Will

If the decree of distribution requires in-kind distribution of assets with the result that all heirs and devisees will not share equally in each asset, and the distribution is other than pursuant to the will or the laws of intestate succession, then an agreement indicating acceptance of the plan of distribution must be signed by each heir and devisee (with the signatures acknowledged) and filed with the Court.

C. Terms of Testamentary Trust

The terms of any testamentary trust must be set out in full in the petition and in the order or decree, and not merely be incorporated by reference. Because the decree of distribution supersedes the will, the terms of the trust must be set forth in the decree in a manner that will give effect to the conditions existing at the time distribution is ordered. The pertinent provisions must be set forth in the present tense and in the third person instead of by merely quoting the will verbatim, because the will in some instances may be in the future tense and/or the first person, and may contain provisions that are no longer applicable.

D. Distribution to a Trust

If distribution is to be made to a trust, then either an acknowledged statement by the trustee accepting the property under the terms of the trust, or a petition by the executor or administrator for the designation of a substitute trustee, must be filed with the Court.

[Rule 15.12 adopted effective July 1, 1996; amended effective July 1, 2009.]

15.13 REQUIRED FORM OF ACCOUNTS IN ALL PROBATE PROCEEDINGS

A. Accounts in General

All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, shall comply with Probate Code §§1060 et seq. A suggested form of summary of account is set forth in Appendix 8 of these Rules, and in Probate Code

§1061.

B. Waivers of Accounting

A detailed accounting may be waived when all persons having a valid interest in the matter have consented in writing. Only waivers given by competent adults are effective. All waivers must be filed with the Court or endorsed on the petition. The effect of full waivers is to make it unnecessary to list the details of receipts and disbursements; no other required matters may be waived.

C. Required Verification for Interim Accounts

Interim accounts in decedent's estate matters that are filed by individual fiduciaries (as opposed to final accounts, or accounts by institutional fiduciaries) must be supported by original statements verifying the balances of bank or investment accounts on the closing date of the estate accounting period). Balances shown in the estate accounting must be reconciled to the statements from the financial or investment institution.

D. Vouchers

Vouchers supporting accounts are not to be filed with the clerk unless the Court specifically orders them filed.

[Rule 15.13 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.14 PETITION TO ESTABLISH THE FACT OF DEATH

A petition to establish the fact of death (to terminate a joint tenancy or life estate) must be verified, and must have the following documents attached as exhibits: 1) a copy of any instrument relating to any interest in the property; and 2) a copy of the death certificate. (Note: there is no statutory provision for Court determination of attorney fees in proceedings for termination of joint tenancy or a life estate; no request for fees for services of this type will be considered by the Court.)

[Rule 15.14 adopted effective July 1, 1996; amended effective July 1, 2001.]

15.15 PETITION TO SET ASIDE SPOUSAL PROPERTY

A. Filing Spousal Property Petition

A petition for determination and/or confirmation of community property must be filed as a separate petition from a petition for probate of will or for letters of administration. If the spousal property petition is filed in a probate proceeding that has already been initiated, the cost for filing will be the amount charged for a subsequent application requiring a hearing. Otherwise, a full filing fee will be charged.

B. Required Allegations in Support of Claim

A petition to determine and/or confirm community property must include the following allegations and supporting information:

(1) Date and place of marriage;

(2) Whether or not decedent owned any real or personal property on the date of marriage (if so, describe the property and state the approximate value on the date of marriage and at present);

(3) Decedent's occupation at time of marriage;

(4) Decedent's net worth at time of marriage;

(5) Whether or not decedent received property after the date of marriage by gift, bequest, devise, descent, or as proceeds from life insurance or joint tenancy survivorship (if so, describe the asset and give approximate date of receipt and approximate value on the date of receipt and at present);

(6) If property was received by decedent pursuant to item (5), above, whether or not it is still a part of the estate;

(7) The date decedent first came to California;

(8) The decedent's net worth upon arrival in California;

(9) Any additional facts upon which the community property claim is based; and,

(10) If the claim is based on any document, a copy must be attached to the petition, preferably a photocopy showing signatures.

C. Survivorship Restriction

If a spouse's right to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse until expiration of the survivorship period.

D. Attorney's Fees

Attorney's fees for services relating to a spousal property petition are not subject to determination by the Court, but must be arranged between counsel and the petitioner.

[Rule 15.15 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.16 SALES OF REAL PROPERTY

A. Appraisals Within One Year

If the death of the decedent occurred more than one year prior to the date of filing of a petition for confirmation of sale of real property, then a reappraisal for the purposes of the sale must be filed prior to the date of the hearing for confirmation of the sale.

B. When Published Notice of Sale Required

Publication of notice of sale of real property will be required whenever court confirmation of such sale is requested, unless a will and/or codicil specifically directs sale of the property, or specifically grants an executor (as distinguished from an administrator with will annexed) authority to sell the property without notice. This publication requirement applies whether or not the personal representative has been granted Independent Administration of Estates Act (IAEA) powers by the Court.

C. Noticing the Location of the Property

The notice of sale of real property must set forth the street address of the property, if any; if there is no street address then the notice must describe the location of the property in addition to providing the legal description.

D. Compliance With the Terms of the Notice

If notice of sale of real property is published, then any sale of the property must be in accordance with the terms of such notice. If a petition for confirmation of sale is filed alleging that the sale took place prior to the date of sale stated in the published notice, then the sale cannot be confirmed and new notice of sale must be published. Pursuant to Probate Code §10308, any petition for confirmation of sale must allege that the sale was made within 30 days prior to the date on which the petition was filed. The specific date of sale must be alleged in the return of sale and petition for its confirmation.

E. Effect of Publication

The published notice of sale of real property constitutes a solicitation for offers. When the personal representative accepts an offer and files a petition for confirmation of sale, there must not be any variance between the terms of the notice and those described in the petition. If the notice solicits cash offers only, then the Court will not confirm a sale on terms other than cash.

F. Date of Sale Specified in Notice

If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the Court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.

G. Terms and Conditions of Sale

The terms and conditions of the sale must be stated in the Report of Sale filed with the Court, as specific attachments if necessary. Merely attaching a copy of the sales contract is not sufficient to satisfy this requirement and is, in fact, discouraged in most cases.

H. Broker's Commission

The Court will not allow a broker's commission for the sale of residential real property that is in excess of six (6) percent, unless a higher commission is justified by exceptional circumstances. The broker's commission on non-residential real property will be set by the Court on an individual basis. No commission will be allowed to a broker who is a buyer of the subject property.

I. Notice of Abatement Sale to Specific Devisee

If the sale is for abatement, notice of time and place of hearing on the return of sale must be given to the specific devisee of the property; otherwise, his or her consent to the sale must be filed prior to the hearing.

J. Requirement of Attorney's Presence at Confirmation

In the absence of the attorney of record, the Court will not proceed on a petition for confirmation of sale of real property and/or for sale of personal property.

K. Overbids

If the sale returned for confirmation is upon credit, and a higher offer which is made to the Court pursuant to Probate Code

§10313 is for either cash or credit (whether on the same or different credit terms), the higher offer will be considered only if the personal representative, prior to confirmation of sale, informs the Court in person or through counsel that the offer is acceptable.

L. Required Evidence of Ability to Pay Overbid

No person will be entitled to appear and bid in a proceeding to confirm a sale unless that person presents to the personal representative, or to counsel for the personal representative, sufficient evidence of that person's ability to pay, forthwith, a deposit of at least ten percent (10%) of the amount fixed by the petition as the overbid price. [Prob. C §10311(a)(2).] Bidding will proceed in such increments from the overbid as the Court deems appropriate.

[Rule 15.16 adopted effective July 1, 1996; amended effective July 1, 2005.]

15.17 ATTORNEYS FEES

In all petitions requesting attorney fees, both ordinary and extraordinary, a specific sum (not merely a "reasonable amount") must be requested.

[Rule 15.17 adopted effective July 1, 1996; amended effective July 1, 2001.]

15.18 NON-STATUTORY (EXTRAORDINARY) FEES AND COMMISSIONS

A. Discretion of the Court; and Standards for Consideration

(1) The award of extraordinary fees and commissions is within the discretion of the Court.

(2) The standards by which requests for extraordinary fees and commissions will be measured are reasonableness, and benefit to the interested parties. The Court will take into consideration the following:

(a) Nature and difficulty of the services;

(b) Results achieved;

(c) Benefit to the estate, conservatee or ward;

(d) Productivity of the time spent in performing the services;

(e) Expertise and experience of the person requesting the fees;

(f) Hourly rate for the person performing the services; and

(g) Total amount requested in relation to the size and income of the estate.

B. Contents of Petition for Extraordinary Fees and Commissions

A petition filed under any provision of the Probate Code which requests fees or commissions in excess of the authorized statutory compensation must include: 1) a declaration by the attorney, personal representative, trustee, or other fiduciary stating the services rendered, or to be rendered, by each of them, itemized by date, time and service rendered; 2) the amount requested for each item of service, together with the total amount requested; and 3) a reference in the caption and prayer to the additional fees. In addition, the request for extraordinary fees and/or commission must be included in the notice of hearing on the petition.

C. Use of Paralegals

Reference to: California Rules of Court, Rule 7.703(e).

[Rule 15.18 adopted effective July 1, 1996; amended effective July 1, 2004.]

15.19 Guardianship Appointments

A. Agency Investigations

(1) *Referral*. All petitions for appointment of a guardian will be referred by the Court for an investigation, pursuant to Probate Code Sections 1513 and 1513.1. The investigation will be conducted by one of the following agencies, as ordered by the Court: Family Court Services 311 Fourth Street Yreka CA 96097 530/842-0192

Adult & Children's Services 1215 S. Main Street Yreka CA 96097 530/841-4200

(2) *Agency Copies*. When a petition for appointment of guardian is filed, the petitioner must provide an additional copy of the petition and of all supporting documents for transmittal by the clerk to the appropriate investigating agency. (Note: This requirement does not relieve the petitioner or counsel from the responsibility of personally providing copies of the petition and supporting documents to the agency.)

B. Appointment of Temporary Guardian

(1) *Ex Parte Applications*. Applications for appointment of a temporary guardian may be submitted ex parte for determination by the Court, with or without an appearance by the petitioner or counsel. If the petitioner or counsel wishes to appear on the ex parte application, he or she must calendar and notice the matter pursuant to Local Rule 3.03.

(2) *Hearings on Temporary Guardianships*. After a petition for the appointment of a temporary guardian of the person of a minor is filed, the following hearings may be held, consistent with the intent of Probate Code §2250:

(a) A noticed hearing on an ex parte petition for appointment of temporary guardian. When it sets the noticed hearing, the Court may make other appropriate orders relating to the application.

(b) A reconsideration hearing to be conducted on the regular guardianship calendar within 30 days from the date of the ex parte order granting temporary guardianship, for the purpose of reviewing the merits and the status of the temporary guardianship. At this hearing, the appropriate investigative agency will provide the Court with a recommendation as to whether or not the temporary guardianship should be continued or be terminated. More than one reconsideration hearing may be required.

(3) *Hearings on Petitions for General Guardian*. Petitions for appointment of a general guardian are set for hearing by the clerk of the Court, and normally are calendared for hearing six to eight (6-8) weeks after the petition for general guardianship is filed.

(4) *Notice Regarding Temporary Guardianships*. The order appointing a temporary guardian will identify the agency that will conduct the investigation, and the order will require that the temporary guardian give notice of the reconsideration hearing to the parents of the minor (this notice is in addition to the notice of hearing required by Probate Code §1511).

[Rule 15.19 adopted effective July 1, 1996; amended effective July 1, 2009.]

15.20 Probate Conservatorship Appointments

A. Public Guardian

The Public Guardian for Siskiyou County is the Siskiyou County Department of Adult & Children's Services, 1215 South Main Street, Yreka, California 96097, telephone (530) 841-4200.

B. Court Investigator

When a petition for appointment of a conservator is filed, the petitioner must also submit a fully completed Judicial Council Form GC-330, "Order Appointing Court Investigator", for the Court's approval, and must provide the clerk with an additional copy of that document for transmittal to the Court Investigator after the appointment has been made. For the same purpose, the petitioner must submit an extra copy of the petition and all supporting documents to the Court Clerk at the time of filing. (Note: This requirement does not relieve the petitioner or counsel from the responsibility of personally providing copies of the petition and supporting documents to the Court Investigator, and from giving the Investigator notice of hearings on the petition.)

[Rule 15.20 adopted effective July 1, 1996; amended and/or renumbered effective July 1, 2004; amended effective July 1, 2009.]

15.21 INDEPENDENT POWERS IN GUARDIANSHIP AND CONSERVATORSHIP MATTERS

A. Application of This Rule

This Rule applies whether the request for independent powers is made in the initial petition for appointment or by a subsequent petition.

B. Standard of Proof

The Court will not approve a petition for the grant of independent powers to a guardian or conservator except upon adequate showing that the particular power being requested is necessary and is for the advantage, benefit, and best interests of the estate. In ruling on the request, the Court will consider the circumstances of the case, the qualifications of the guardian or conservator, and the potential expense of further proceedings should the requested independent powers be denied.

C. Sale of Residence

A request for authority to sell the current or former residence of a ward or conservatee must include the information that is required by Probate Code §2540(b).

D. Return and Confirmation of Sale

When the independent power to sell real estate is granted, the sale must be returned to the Court for over-bidding and confirmation.

E. Statement of Powers

Any independent powers that are granted by the Court must be set forth at length in the Order and in the Letters. If the powers are granted by a subsequent order, or if independent powers already granted are withdrawn or limited, new Letters must be issued.

[Rule 15.21 adopted effective July 1, 2001; amended and/or renumbered effective July 1, 2004.]

15.22 Bond In Guardianships And Conservatorships

The Court ordinarily will fix bond in the amount permitted by Prob C §2320 for a bond given under that section by an admitted surety insurer. However, upon a showing of good cause, the Court may increase or decrease the bond amount, and, if it appears likely that the conditions of Prob C §2628(a) will be satisfied for the duration of the estate, the Court may dispense with bond.

[Rule 15.22 adopted effective July 1, 1996; renumbered effective July 1, 2004; amended effective July 1, 2009.]

15.23 CONSERVATOR'S HANDBOOK

A. Purchase and Proof of Purchase

Every conservator appointed by this Court, with the exception of those excluded by Rule 15.23.B, below, below, must purchase a copy of the Conservator's Handbook from the Clerk of the Court. [Probate Code §1835.] Proof of purchase of the Handbook must be filed with the Court not later than five (5) days before the scheduled hearing on the petition for appointment of conservator. Failure to meet the requirement of subsection (1), above, may result in the petition for appointment being ordered off calendar, and if the petitioner is the temporary conservator, it may result in the suspension of that person's powers as temporary conservator.

B. Handbook Purchase Not Required

The Public Guardian, corporate fiduciaries, banks, and other entities authorized to conduct the business of a trust company are not required to purchase the Conservator's Handbook.

[Rule 15.23.B adopted effective July 1, 1996; renumbered effective July 1, 2004.]

15.24 RESPONSIBILITY OF PARENTS TO SUPPORT WARD

Because parents are required by statute to support their children, the Court will not permit the guardianship estate to be used for the ward's maintenance where one or both parents are living, except upon a showing of the parent's financial inability to provide support (preferably evidenced by a Judicial Council Form 1285.50 "Income and Expense Declaration") or a showing of other circumstances that would justify the Court's departure from this Rule; any departure must be in the best interests of the ward.

[Rule 15.24 adopted effective July 1, 1996; renumbered effective July 1, 2004.]

15.25 INVESTMENTS BY GUARDIANS

A. Standards

(1) The standard set forth in Probate Code §16040(a), providing for investments by trustees, is the standard applied by the Court in authorizing proposed investments by guardians. The guardian should also consider the circumstances of the estate, the indicated cash needs of the ward, and the date of prospective termination of the guardianship. Investments by guardians must be prudent and in keeping with the size and character of the ward's estate.

B. Unauthorized Investments

(1) Except upon a strong showing of good cause, the Court will not approve investment of the ward's funds in unsecured loans, secured loans to near relatives, or debenture bonds (except those which are part of a large issue and are well-seasoned and listed on an established securities exchange).

(2) The Court will not approve investment of the ward's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

(3) In most instances, investment in real estate, either by purchase or encumbrance, will not be approved by the Court unless supported by an appraisal of the property, performed by the probate referee.

[Rule 15.25 adopted effective July 1, 1996; amended and/or renumbered effective July 1, 2004.]

15.26 BLOCKED ACCOUNTS IN GUARDIANSHIPS AND CONSERVATORSHIPS

A. Time of Establishment

A request to deposit funds of a guardianship or conservatorship estate in blocked accounts, for the purpose of reducing bond or otherwise, may be included in the petition for appointment or made in a subsequent petition.

B. Type of Account

All deposits into blocked accounts must be made into federally insured, interest-bearing accounts, with no maturity date unless otherwise ordered by the Court. If funds are to be placed in an account having a maturity date, the applicant and counsel are cautioned that funds must also be maintained in another account in an amount sufficient to pay reasonably foreseeable expenses (e.g., taxes) without incurring penalties or loss of interest.

C. Maximum Amount of Deposits

The initial deposit into any one blocked account must not exceed Ninety Thousand Dollars ($90,000). In no event may more than One Hundred Thousand Dollars ($100,000) be held in a single federally-insured depository. If it becomes necessary to transfer funds to an additional depository in order to comply with this Rule, prior approval of the Court is required.

D. Proof of Deposit Into Blocked Account

Within 30 days after an order for deposit into a blocked account is signed by the Court, the trustee of the account must file a receipt from the depository, evidencing the ordered deposit.

E. Withdrawals From Blocked Accounts

(1) *Court Order Required.* Except when the terms of the order for deposit provide for automatic withdrawal by the minor upon attaining majority, withdrawals of principal or interest may not be made unless ordered by the Court.

(2) *Supporting Documentation.* Every application for an order to withdraw funds from a blocked account must be verified. The following documents must be attached to the application:

(a) a certified copy of the birth certificate of the minor, and

(b) either (i) an updated savings passbook or a statement showing all deposits and withdrawals since the account was opened, or (ii) a letter from the depository identifying the account and setting forth the dates and amounts of all deposits and withdrawals, along with the current balance.

(3) *Consent of Minor.* If the minor is fourteen years of age or older, he or she (as well as the guardian or trustee) must sign the petition.

(4) *Ex Parte Requests.* A request for withdrawal from a blocked account may be made ex parte.

(5) *Parental Responsibilities; Withdrawals For The Payment of Taxes.* Except for withdrawals to pay taxes on a minor's funds, petitions for withdrawals ordinarily will not be granted if either or both parents of the minor are living and either is financially able to pay the requested expenditure. Except for petitions for withdrawals to pay taxes, a financial declaration by the parents or parent describing his, her, or their income and expenses must be attached to the petition (Judicial Council Form 1285.50 is recommended). Also, a statement regarding the minor's employment and income, if any, must be attached to the application. Copies of bills, statements, or letters related to the request also must be attached. If the application is for payment of taxes on the minor's funds, copies of the applicable tax returns must be submitted with the petition, but must not be attached to the petition, and must be marked "confidential".

(6) *Withdrawal For Purchase of Vehicle.* If the requested withdrawal is for the purchase of a vehicle, a copy of the proposed purchase/sale agreement must be attached to the petition; the agreement must show the type of vehicle, year, purchase price, and whether the payment will be made in full or in specified installments. Because the petition may be denied, a binding purchase/sale agreement must not be entered into before a court order is obtained. In addition to the aforesaid agreement, a casualty insurance quote must be attached to the petition; the quote must show that the minimum public liability coverage equals or exceeds the funds that will remain on deposit after the purchase, and the petition must identify the person or persons who will pay for the insurance.

(7) *Withdrawal For Medical Expenses.* If the request for withdrawal pertains to medical care for an accident or other casualty, or for a legal matter, the petition must explain why the expense is necessary and why it is not covered by insurance or other resource.

(8) *Withdrawals For Reimbursement.* If the request is for reimbursement for an expense already paid, then proof of payment (i.e., cancelled check or receipt) must be attached to the petition.

[Rule 15.26 adopted effective July 1, 1996; amended and/or renumbered effective July 1, 2004.]

15.27 Accounts of Guardians and Conservators

A. Form

The form of accounts shall conform to Probate Code §1060, et seq., and to Appendix 8 of these Rules.

B. Multiple Accounts in Guardianships

When a guardian accounts for the assets of more than one ward in the same proceeding, the accounting for each ward must be set forth separately.

C. Final Accounts in Guardianships

The Court does not favor the waiver of final accounts by the ward, and generally will not approve a final report when the account is waived unless the ward is present in court at the time of the hearing.

D. Notice of Death to Director of Health Services

Upon termination of a proceeding due to the death of the ward or conservatee, the final report and account must contain either an allegation that notice of said death was provided to the Director of Health Services (as required by Probate Code §215) or an allegation that no such notice is required.

E. Order Dispensing With Accounting

If it appears likely that the estate will satisfy the conditions of Probate Code §2628(a) throughout its duration, the Court may dispense with an accounting. Application for an order dispensing with accountings may be made at the time of the appointment of the guardian or conservator, or when the interim account is due.

[Rule 15.27 adopted effective July 1, 1996; renumbered effective July 1, 2004; amended effective July 1, 2009.]

15.28 CHANGE OF CONSERVATEE'S ADDRESS

The conservator must notify the Court of any change of the conservatee's residence, within thirty (30) days of the conservatee's move, by filing a notice of change of address with the Clerk of the Court.

[Rule 15.28 adopted effective July 1, 1996, renumbered effective July 1, 2004.]

15.29 PROCEDURES UPON THE DEATH OF THE WARD OR CONSERVATEE

A. Required Notice to Court

The guardian or conservator must notify the court, within thirty (30) days *and in writing,* of the death of the ward or conservatee.

B. Termination of the Guardianship or Conservatorship Estate

If the ward dies before reaching majority, or upon the death of the conservatee, the guardian or conservator must petition the Court to terminate the estate; and may, in conjunction with that petition, seek allowance for claims against the estate and for disposition of the estate if the estate is valued at less than $60,000 and can be disposed of pursuant to Probate Code Sections 13100 through 13111. If the provisions of §§13100 *et seq.* are utilized, the petition for termination and the final account must include a declaration, pursuant to Probate Code §13101, from each person entitled to distribution of the estate.

[Rule 15.29 adopted effective July 1, 1996; renumbered effective July 1, 2005.]

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Solano County
Probate Rules

Effective January 1, 2010

RULE *7*—PROBATE

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PROBATE PROCEEDINGS OTHER THAN TRUSTS

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PROBATE RULES CONVERSION TABLE

RULE *7*—PROBATE

PART ONE: PROBATE PROCEEDINGS OTHER THAN TRUSTS

7.1 SCOPE OF PROBATE RULES

a. Matters to Which Rule *7* Applies

Except as otherwise provided elsewhere in these rules, these probate rules apply to all matters governed by the Probate Code. (Subd (a) adopted effective July 1, 2009.)

b. Matters to Which Rule *7* Does Not Apply

Except as otherwise provided elsewhere in these rules, Rule *7* does not apply to probate guardianships or probate conservatorships, which are governed by Rule 15. (Subd (b) adopted effective July 1, 2009.)

(Rule *7*.1 amended effective January 1, 2010; adopted effective July 1, 2009.)

7.1 [RENUMBERED]

(Former Rule *7*.1 renumbered as Rule *7*.2 effective July 1, 2009.)

7.2 USE OF JUDICIAL COUNCIL FORMS; FORMAT OF PLEADINGS

a. Use of Judicial Council Forms

Printed forms of petitions, orders and other documents which have been adopted or approved by the Judicial Council shall be used in all cases where applicable. (Subd (a) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule *7*.1 effective July 1, 1988.)

b. Format of Pleadings

Petitions, orders and other documents for which there is no available form approved by the Judicial Council shall conform to the requirements of the California Rules of Court, rules 2.100-2.119. (Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule *7*.1 effective July 1, 1988.)

c. Notices of Unavailability of Counsel

The court shall not accept for filing a "Notice of Unavailability of Counsel" or other document or pleading whose sole purpose is

to advise the court and/or other parties of an attorney's or party's unavailability. Carl v. Superior Court of Orange County (2007) 157 Cal.App.4th 73. (Subd (c) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.1 effective July 1, 1988.)

(Rule 7.2 amended and renumbered effective July 1, 2009; adopted as Rule 7.1 effective July 1, 1988; previously amended effective January 1, 2009.)

7.2 [RENUMBERED]

(Former Rule 7.2 renumbered as Rule 7.3 effective July 1, 2009.)

7.3 SIGNATURES AND VERIFICATION OF PLEADINGS

Petitions, reports and accounts, as well as objections or responses to petitions, reports and accounts, shall be verified as required by Probate Code section 1020 et seq. The verification shall be included as part of the pleading at the time the pleading is filed. An unverified pleading set for hearing will be placed off-calendar or denied without prejudice.

(Rule 7.3 amended and renumbered effective July 1, 2009; adopted as Rule 7.2 effective July 1, 1988; previously amended effective July 1, 1989.)

7.3 TITLES [REPEALED]

(Former Rule 7.3 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.4 BONDING OF PERSONAL REPRESENTATIVE

a. Increases in Bonds

When a bond must be increased, the court will ordinarily require the filing of an additional bond rather than a substitute bond.

b. Decreases in Bonds

When the bond may be decreased, the court will ordinarily require an order decreasing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be filed and set for a noticed hearing. A petition to reduce bond shall not be granted ex parte.

(Rule 7.4 amended and renumbered effective July 1, 2009; adopted as Rule 7.6 effective July 1, 1988; previously amended effective July 1, 1989.)

7.4 COPIES OF ORDERS [REPEALED]

(Former Rule 7.4 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.5 DECLINATION OF NOMINATED EXECUTOR

If the person petitioning for letters is not the nominated executor in the decedent's will, it is insufficient to allege merely that the nominated executor declines to act as such. The petitioner must either (1) attach to the petition a written declination to act as executor, signed by the nominated executor, or (2) include in the petition sufficient facts demonstrating that the nominated executor should be held to have waived his or her right to appointment per Probate Code section 8001. Any such nominated executor must receive notice of the petition per Probate Code section 8110.

(Rule 7.5 amended and renumbered effective July 1, 2009; adopted as Rule 7.7 effective July 1, 1988.)

7.5 WILLS AND CODICILS AS EXHIBITS TO PETITION [REPEALED]

(Former Rule 7.5 repealed effective July 1, 2009; adopted effective July 1, 1988; amended effective July 1, 1989.)

7.6 NOTICES

Several Probate Code sections require the Clerk of the Court to "cause notice of the hearing to be mailed." The Clerk fulfills this function by requiring a party or a party's counsel to do the mailing. Therefore, the party or the party's counsel is charged with this duty.

(Rule 7.6 amended and renumbered effective July 1, 2009; adopted as Rule 7.10 effective July 1, 1988; previously amended

effective July 1, 1989.)

7.6 [RENUMBERED]

(Former Rule *7.6* renumbered as Rule *7.4* effective July 1, 2009.)

7.7 NOTIFICATION TO COURT OF CONTINUANCES, DROPS OR STIPULATIONS

a. Duty to Notify Department

When a probate matter is to be dropped, continued or stipulated to, counsel for the moving party shall promptly notify the department of the court to which the matter is assigned. No matter shall be continued unless the department of the court to which the matter is assigned approves of the continuance date. Any continuance requested within forty-eight (48) hours of the hearing date shall be directed to the department in which the hearing is scheduled for approval. (Subd (a) adopted effective July 1, 2009.)

b. Continuance of Hearing After Announcement of Pregrant Order

No probate matters will be continued after announcement of a pregrant thereon, except by order of the court for good cause. (Subd (b) adopted effective July 1, 2009.)

(Rule *7.7* adopted effective July 1, 2009.)

7.7 [RENUMBERED]

(Former Rule *7.7* renumbered as Rule *7.5* effective July 1, 2009.)

7.8 PREGRANTS IN PROBATE MATTERS

a. Availability of Pregrant Orders

A pregrant order on a probate matter will be available on the court day immediately preceding the scheduled hearing by telephoning a tape-recorded message at (*707*) 207-7331 or by signing onto the court's web site at www.solano.courts.ca.gov and clicking "Tentative Rulings" after 2:00 p.m. Thus, for example, for a matter on a Monday calendar, one may call the recorded message or check the court's web site after 2:00 p.m. on the preceding Friday afternoon. (Subd (a) amended effective January 1, 2010; adopted effective July 1, 2009.)

b. Pregrant Order as the Order of the Court

The pregrant order shall become the ruling of the court unless a party desiring to be heard so advises the judicial assistant of the department hearing the matter no later than 4:30 p.m. on the court day preceding the hearing, and further advises that such party has notified all interested parties of its intention to appear and argue. (Subd (b) adopted effective July 1, 2009.)

(Rule *7.8* amended effective January 1, 2010; adopted effective July 1, 2009; former Rule *7.8*, which concerned filing fees, repealed effective July 1, 2009.)

7.8 FEES [REPEALED]

(Former Rule *7.8* repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.9 APPEARANCES AT HEARINGS

a. Hearings Where Appearance Not Required

Those matters which by law may be determined upon verification and without testimony shall be submitted for appropriate action by the court without appearance by counsel or witnesses, provided that counsel or the petitioning party accomplish both of the following:

(1) All declarations, affidavits, consents, waivers, proposed orders and other necessary papers shall be filed with the Clerk of the Court no later than four full court days prior to the hearing.

(2) The verified petition or an accompanying affidavit signed by the petitioner or by the personal representative or by counsel of record for either of said persons shall set forth the information necessary to establish the amount of bond, if one is required.

All probate matters shall be non-appearance except as stated in Solano County Local Rules, rule *7.9*, subdivision (b), or where

an appearance is required by the court.

(Subd (a) amended effective July 1, 2009; adopted effective July 1, 1989; previously amended effective January 1, 2009.)

b. Hearings Where Appearance Is Required

Subdivision (a) shall not apply and personal appearance by the parties and/or counsel shall be required in the following cases:

(1) Contested matters.

(2) Proof of holographic wills, if the petitioner did not previously submit proof of the admissibility of each testamentary document to probate or if an appearance is specially required by the hearing judge.

(3) Petitions for court confirmation of sales of property.

(4) Any non-routine matter which by law requires the personal appearance of any person.

(Subd (b) amended effective July 1, 2009; adopted effective July 1, 1989; previously amended effective January 1, 2009.)

c. Telephonic Appearance

Telephonic appearance will be permitted when authorized by California Rule of Court, rule 3.670 and Solano County Local Rules, rule 4.12(h), if the party seeking to appear telephonically has also complied with the notice requirements set forth in those rules, and subject to the exceptions set forth in those rules and the court's discretion to require personal appearances. (Subd (c) amended effective January 1, 2010; amended and relettered effective July 1, 2009; adopted as subd (d) of Rule 7.11 effective July 1, 1989; previously amended effective January 1, 2009.)

(Rule 7.9 amended effective January 1, 2010; amended and renumbered effective July 1, 2009; adopted as Rule 7.11 effective July 1, 1989.)

7.9 CALENDARING [REPEALED]

(Former Rule 7.9 repealed effective July 1, 2009; adopted effective July 1, 1988; amended effective July 1, 1989.)

7.10 EX PARTE APPLICATIONS

a. Notice on Ex Parte Petitions

(1) Unless otherwise ordered by the court, a party seeking ex parte relief shall provide notice of the petition to all individuals entitled to notice of a petition by 10:00 a.m. on the court day prior to the ex parte appearance.

(2) All applications for ex parte orders must contain a statement on special notices. The statement shall recite that no request for special notice is on file and in effect or shall list the parties requesting special notice and have attached to the petition the specific waivers of notice by such parties or proof of service on parties requesting special notice.

(Subd (a) adopted effective July 1, 2009; previously adopted as subd (c) of former Rule 7.11 effective July 1, 1989.)

b. Waiver of Notice

A party seeking to dispense with notice for a particular individual for whom notice has not yet been waived shall file a request to dispense with notice concurrently with the ex parte petition. The request shall set forth sufficient evidentiary facts supporting the request. for individuals who cannot be located, the party shall file a declaration of due diligence in compliance with California Rules of Court, rule 7.52, prior to the ex parte appearance. (Subd (b) adopted effective July 1, 2009.)

c. Ex Parte Procedure

(1) Ex parte hearings are scheduled by each department individually. A party wishing to set an ex parte hearing shall contact the department to which the case is assigned by noon on the court day prior to the desired ex parte appearance. The moving papers and the proposed order shall be faxed to the department as directed by the judicial assistant.

(2) On the day of the ex parte appearance, the party seeking ex parte relief shall file the original petition or motion seeking ex parte relief with the Clerk of the Court and pay the applicable filing fees. The party shall provide a copy of the receipt showing the payment of fees to the court at the time of the ex parte appearance; otherwise, the hearing shall not take place.

(Subd (c) adopted effective July 1, 2009.)

(Rule 7.10 adopted effective July 1, 2009.)

7.10 [RENUMBERED]

(Former Rule 7.10 renumbered as Rule 7.6 effective July 1, 2009.)

7.11 APPOINTMENT OF SPECIAL ADMINISTRATOR

Except upon a showing of good cause for dispensing with notice, petitions for special letters of administration will not ordinarily be granted without the petitioning party giving notice in compliance with Probate Code section 8003 and 8110. Applications for special letters of administration may be requested ex parte, provided the application is prepared and submitted in compliance with Solano County Local Rules, rule 7.10, and California Rules of Court, rule 7.55.

(Rule 7.11 amended and renumbered effective July 1, 2009; adopted as Rule 7.14 effective July 1, 1988; previously amended effective July 1, 1989.)

7.11 [RENUMBERED]

(Former Rule 7.11 renumbered as Rule 7.9 effective July 1, 2009.)

7.12 INFORMATION TO BE CONTAINED IN PETITIONS FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY; FOR LETTERS OF ADMINISTRATION; OR FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED (PROBATE CODE SECTION 8000 ET SEQ.)

a. Information to be Included With the Petition

Any petition for probate of a will and for letters testamentary, for letters of administration, or for letters of administration with will annexed shall contain the following information:

(1) If the heir is a minor, the heir's date of birth.

(2) The name of any and all nominated trustees of a trust created by the will.

(3) The name of any and all trustees and beneficiaries of an inter vivos trust created by the decedent and that is in existence at the time of the decedent's death.

(4) The name of any and all trustees of a special needs or other trust created to benefit the decedent and that is in existence at the time of the decedent's death.

(Subd (a) adopted effective July 1, 2009.)

b. Information Concerning a Deceased Beneficiary

In addition to the information required in Rule 7.12(a), information concerning a deceased beneficiary shall be included in the petition as follows:

(1) If an heir or beneficiary dies before the decedent, that person should be listed with the notation that he or she is predeceased, and date of death. No notice need be given to the successors in interest of the predeceased person unless that person's interest has not lapsed by reason of death, in which case, notice should be given in the same manner as for the postdeceased heir or beneficiary.

(2) If an heir or beneficiary dies after the decedent, that person's name should be listed with the notation "deceased", and date of death. If a personal representative has been appointed, the postdeceased heir or beneficiary should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, that fact should be alleged, and notice given to the last known address of the postdeceased heir or beneficiary.

(3) If a named beneficiary predeceased the decedent or did not survive the decedent for the designated survival period, that fact must be stated, together with the actual or approximate date of death.

(Subd (b) adopted effective July 1, 2009.)

(Rule 7.12 amended and renumbered effective July 1, 2009; adopted as Rule 7.15 effective July 1, 1988.)

7.12 SHORT CAUSE CALENDAR [REPEALED]

(Former Rule 7.12 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.13 PREPARATION OF ORDERS

a. Proposed Orders Submitted Prior to Hearing

All probate orders in uncontested matters shall be prepared by the petitioner's attorney of record or the petitioner, if unrepresented, and shall be submitted at least four court days prior to the hearing. (Subd (a) adopted effective July 1, 2009.)

b. Material to be Included in Probate Orders

All orders or decrees in probate matters must be complete in and of themselves, so that their effect may be understood without reference to the underlying petition. The order or decree shall set forth all matters actually passed on by the court, the relief granted, and the names of persons and descriptions of property or amounts of money affected with the same particularity required of judgments in civil matters. The court will not approve orders or decrees that merely recite that the petition as presented is granted or incorporate by reference the relief sought in the petition. However, in orders settling accounts, the court will ordinarily approve general language approving the account, the report, and the acts reflected therein. With the exception of attached schedules, no written matter shall appear after the judicial officer's signature line. (Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.19 effective July 1, 1988.)

(Rule 7.13 amended and renumbered effective July 1, 2009; adopted as Rule 7.18 effective July 1, 1988.)

7.13 LONG CAUSE CALENDAR [REPEALED]

(Former Rule 7.13 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.14 INTEREST ON FUNERAL AND INTERMENT CLAIMS

When accrued interest has been paid on delayed payment of claims for the reasonable costs of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit has been taken for such payment, setting forth reasons for any delay in payment. The court will not allow credit for payment of interest when the delay in payment of the claims is not justified by the facts set forth. Interest for funeral and interment claims will be allowed only as provided by Health and Safety Code section 7101.

(Rule 7.14 amended and renumbered effective July 1, 2009; adopted as Rule 7.21 effective July 1, 1988.)

7.14 [RENUMBERED]

(Former Rule 7.14 renumbered as Rule 7.11 effective July 1, 2009.)

7.15 REAL ESTATE IN INVENTORY AND APPRAISAL

If a decedent's estate contains real property, the inventory and appraisal shall identify that property by its address and shall include a legal description of the property. If the parcel is unimproved, the inventory must so state.

(Rule 7.15 amended and renumbered effective July 1, 2009; adopted as Rule 7.23 effective July 1, 1988; amended effective July 1, 1989.)

7.15 [RENUMBERED]

(Former Rule 7.15 renumbered as Rule 7.12 effective July 1, 2009.)

7.16 CASH DEPOSIT

A minimum cash deposit of ten percent (10%) of the purchase price (unless the loan proceeds exceed 90% of the purchase price), shall be deposited in escrow ten days prior to the confirmation of sale hearing date, and written verification of said deposit shall be filed with the court five (5) days prior to the confirmation of sale hearing date.

(Rule 7.16 renumbered effective July 1, 2009; adopted as Rule 7.24 effective July 1, 1988; previously amended effective July 1, 1989.)

7.16 ATTORNEY'S NAMES [REPEALED]

(Former Rule *7.16* repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.17 SECOND DEEDS OF TRUST

The court will approve the taking of a promissory note secured by a second deed of trust upon a showing that it serves the best interests of the estate.

(Rule *7.17* renumbered effective July 1, 2009; adopted as Rule *7.25* effective July 1, 1988.)

7.17 PROOF OF WILLS [REPEALED]

(Former Rule *7.17* repealed effective July 1, 2009; adopted effective July 1, 1988; revised effective July 1, 1989.)

7.18 EARNEST MONEY DEPOSIT BY OVERBIDDER

When a sale is confirmed to an overbidder, the overbidder must submit at the time of the hearing a certified or casher's check in the amount of ten percent (10%) of the bid.

(Rule *7.18* renumbered effective July 1, 2009; adopted as Rule *7.26* effective July 1, 1988.)

7.18 [RENUMBERED]

(Former Rule *7.18* renumbered as Rule *7.13* effective July 1, 2009.)

7.19 APPEARANCES OF COUNSEL

In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the court will ordinarily not proceed with the confirmation of the sale in the absence of the petitioner's attorney, if the petitioner is represented. Where the personal representative, guardian or conservator is present and requests that the sale proceed, the court may do so, in its discretion.

(Rule *7.19* amended and renumbered effective July 1, 2009; adopted as Rule *7.27* effective July 1, 1988; previously amended effective July 1, 1988.)

7.19 MATERIAL TO BE INCLUDED IN PROBATE ORDERS [REPEALED]

(Former Rule *7.19* repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.20 CONDITIONAL SALES OF REAL PROPERTY

The court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail, the court may approve such a sale.

(Rule *7.20* amended and renumbered effective July 1, 2009; adopted as Rule *7.30* effective July 1, 1988.)

7.20 APPROVAL OF FUNERAL AND INTERMENT CLAIMS [REPEALED]

(Former Rule *7.20* repealed effective July 1, 2009; adopted effective July 1, 1988; revised effective July 1, 1989.)

7.21 BROKER'S COMMISSIONS

a. Improved Real Property

An agent or broker's commission on the sale of improved real property shall not exceed six percent (6%). A copy of an executed broker's agreement shall be attached to the petition for confirmation of sale. (Subd (a) amended effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

b. Unimproved Real Property

An agent or broker's commission on the sale of unimproved or raw real property shall not exceed ten percent (10%). A copy of an executed broker's agreement shall be attached to the petition for confirmation of sale. (Subd (b) amended effective July 1, 2009;

adopted effective July 1, 1988; previously amended effective July 1, 1989.)

c. Broker Commissions in Overbid Situations

Broker commissions in overbid situations are governed by Probate Code section 10160 et seq. (Subd (c) amended effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

(Rule 7.21 amended and renumbered effective July 1, 2009; adopted as Rule 7.31 effective July 1, 1988; previously amended effective July 1, 1989.)

7.21 [RENUMBERED]

(Former Rule 7.21 renumbered as Rule 7.14 effective July 1, 2009.)

7.22 STATUTORY COMPENSATION FOR PERSONAL REPRESENTATIVE AND ATTORNEY FEES

a. Inclusion of Computation in Petition

The computation in Rule 7.22, subsection (b), must be made regardless of the estate's value and even though an accounting has been waived. For estates worth in excess of $25,000,000.00 (twenty-five million dollars), the court shall determine the reasonable amount of compensation. (Subd (a) adopted effective July 1, 2009.)

b. Format of Request for Statutory Compensation and Attorney Fees

The basis for statutory compensation and attorney fees requested shall be set out in the body of the petition for distribution or on a separate schedule as required per California Rules of Court, rule 7.705. (Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.36 effective July 1, 1988.)

(Rule 7.22 amended and renumbered effective July 1, 2009; adopted as Rule 7.36 effective July 1, 1988.)

7.22 MODE OF FILING CREDITORS' CLAIM [REPEALED]

(Former Rule 7.22 repealed effective July 1, 2009; adopted effective July 1, 1988; revised effective July 1, 1989.)

7.23 PARTIAL ALLOWANCE OF STATUTORY COMPENSATION OR ATTORNEY FEES

a. Court Order Required

A personal representative may not pay an advance on statutory compensation or attorney fees without prior court order. Petitions for an advance of statutory compensation or attorney fees may not be brought ex parte. (Subd (a) adopted effective July 1, 2009.)

b. Requirement of Inventory and Appraisal; Accounts

Notwithstanding Probate Code section 10830, the court shall not consider a petition seeking an advance of statutory compensation or attorney fees unless the personal representative's Inventory and Appraisal is filed prior to or concurrently with the petition. The court prefers that attorney fees not be requested until the first account has been filed. (Subd (b) adopted effective July 1, 2009.)

c. Amount of Statutory Compensation or Attorney Fees Permitted as an Advance

Any allowance for statutory compensation or attorney fees will be made in accordance with the work actually performed. Where no accounting is filed, the allowance may not exceed 50% of the statutory compensation computed upon the total value appearing in the inventories filed to that time. Where an accounting is filed, the allowance may not exceed 75 % of the statutory compensation so computed. (Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.37 effective July 1, 1988.)

d. Apportionment of Fees for Successive Attorneys

Except in a case in which there is an agreement in writing on apportionment, where the personal representative has been represented by successive attorneys, fees will not ordinarily be apportioned to a prior attorney for the personal representative until the final accounting has been approved. (Subd (d) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.37 effective July 1, 1988.)

(Rule 7.23 amended and renumbered effective July 1, 2009; adopted as Rule 7.37 effective July 1, 1988; previously amended effective July 1, 1989.)

7.23 [RENUMBERED]

(Former Rule 7.23 renumbered as Rule 7.15 effective July 1, 2009.)

7.24 APPORTIONMENT OF STATUTORY COMPENSATION BETWEEN TWO OR MORE PERSONAL REPRESENTATIVES

If the statutory compensation is to be divided among co-personal representatives, the petition shall set out facts upon which the court can base the apportionment.

(Rule 7.24 amended and renumbered effective July 1, 2009; adopted as Rule 7.38 effective July 1, 1988.)

7.24 [RENUMBERED]

(Former Rule 7.24 renumbered as Rule 7.16 effective July 1, 2009.)

7.25 EXTRAORDINARY COMPENSATION FOR PERSONAL REPRESENTATIVE; EXTRAORDINARY ATTORNEY FEES

a. Contents of Petitions or Declarations for Extraordinary Compensation or Fees

All applications for extraordinary compensation for the personal representative's services and for extraordinary attorney's fees must be supported in the petition or in the separate verified declaration requesting said fees. At a minimum, the declaration or petition shall state:

(1) The nature, necessity, success, cost in time, detail of the services performed and value of the services believed to warrant additional fees;

(2) The amount requested; and,

(3) The number of hours spent on ordinary services. Records of time spent, without substantiated information, are not adequate.

(Subd (a) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.39 effective July 1, 1988.)

b. Factors That Will Not Support a Request for Extraordinary Compensation or Fees

The routine conduct of any proceeding relating to the collection of assets, processing of claims, conduct of estate administration or distribution will not, in the absence of special circumstances or problems, justify an extraordinary fee. (Subd (b) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.39 effective July 1, 1988.)

(Rule 7.25 amended and renumbered effective July 1, 2009; adopted as Rule 7.39 effective July 1, 1988.)

7.25 [RENUMBERED]

(Former Rule 7.25 renumbered as Rule 7.17 effective July 1, 2009.)

7.26 DISTRIBUTIVE CONTINGENCIES

If the right of a beneficiary to distribution of part of the estate is dependent upon the occurrence of an event (e.g., death of a parent), the petition must allege the occurrence of that event and the order must contain a finding of the occurrence of that event.

(Rule 7.26 renumbered effective July 1, 2009; adopted as Rule 7.41 effective July 1, 1988.)

7.26 [RENUMBERED]

(Former Rule 7.26 renumbered as Rule 7.18 effective July 1, 2009.)

7.27 CONTENTS OF PETITION AND DECREE OF PARTIAL OR FINAL DISTRIBUTION

a. When Proposed Decree Required

The proposed form of Decree of Distribution shall be filed with any petition for partial or final distribution. (Subd (a) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

b. Description of Property to be Distributed

The distribution of property must be separately stated in detail in both the petition and the decree, listing a description of the property to be distributed under the name of each beneficiary. Real estate shall be legally described and street address, if any, shall be included. The decree must be complete in and of itself. Description by reference to the inventory is not acceptable. In both the petition and decree for final distribution, the distribution schedule shall include a summary showing the value of the estate distributed to each beneficiary and the total estate distributed which must agree with "Property on Hand" as shown on the final account's Schedule F and in the summary of account. If any beneficiaries previously received an early distribution, the petition and the decree shall so state. (Subd (b) amended effective January 1, 2010; amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

c. Tracing Required for Intestate Decedent

If an intestate decedent who survived his spouse leaves no issue, the applicability of Probate Code Section 6402.5 must be alleged and the necessary tracing must be carried out as far as possible. (Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

d. Other Items to be Included in the Petition and Decree

(1) A petition and any decree for distribution shall include the names and addresses of all persons who are present and future distributees of the estate, and shall indicate whether each person listed is an adult or a minor. In all cases where a minor is a distributee, the minor's age and birth date must be stated in the petition and the decree for distribution. (Subd (1) adopted effective January 1, 2010.)

(2) If distribution will not be made directly to the beneficiary, the name, address and fiduciary capacity of the recipient must be stated in the petition and the decree for distribution. (Subd (2) adopted effective January 1, 2010.)

Subd (d) adopted effective January 1, 2010.)

(Rule 7.27 amended effective January 1, 2010; adopted as Rule 7.42 effective July 1, 1988; previously amended effective July 1, 1989; amended and renumbered effective July 1, 2009.)

7.27 [RENUMBERED]

(Former Rule 7.27 renumbered as Rule 7.19 effective July 1, 2009.)

7.28 DISTRIBUTIONS TO TRUSTS

a. Distributions to Testamentary Trusts

The provisions of a decree of distribution establishing a testamentary trust shall include all of the terms of the will relating to the trust. Per California Rules of Court, rule 7.650, the provisions of the trust shall be stated in the present tense and in the third person, and shall not quote the will verbatim. If a trust beneficiary will receive distribution upon reaching a specific age, the petition for distribution and decree thereon must state the age and birthdate of the beneficiary. (Subd (a) amended effective January 1, 2010; amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.43 effective July 1, 1988.)

b. Distributions to Inter Vivos Trusts

A decree of distribution which distributes assets to an inter vivos trust shall name the trust and specify the name of the trustee to receive the assets. The decree of distribution shall not be approved absent a declaration by the trustee that he or she has in fact accepted the trust. A decree of distribution for a decedent's estate shall not name as beneficiaries of the estate in the distribution plan any beneficiaries who are entitled to distributions from the trust. (Subd (b) adopted effective July 1, 2009.)

(Rule 7.28 amended effective January 1, 2010; amended and renumbered effective July 1, 2009; adopted as Rule 7.43 effective July 1, 1988; former Rule 7.28, which concerned overbids, repealed effective July 1, 2009.)

7.28 OVERBIDS [REPEALED]

(Former Rule 7.28 repealed effective July 1, 2009; adopted effective July 1, 1988; revised effective July 1, 1989.)

7.29 JOINT TENANCY ASSETS

In the absence of prior court determination or authorization, joint tenancy assets of the decedent and a person other than the decedent's spouse should not be inventoried as assets of the probate estate. However, an asset held in joint tenancy between the decedent and the decedent's spouse, or former spouse in appropriate cases, shall be inventoried if there is an unadjudicated allegation that the asset is in fact community property. A notation concerning the allegation shall be included in all inventory and appraisals until the asset's characterization is determined.

(Rule *7.29* amended and renumbered effective July 1, 2009; adopted as Rule *7.49* effective July 1, 1988; former Rule *7.29*, which concerned increased bid forms, repealed effective July 1, 2009.)

7.29 INCREASED BID FORMS [REPEALED]

(Former Rule *7.29* repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.30 PERSONAL REPRESENTATIVE COMPENSATION AND ATTORNEY FEES IN CONNECTION WITH TERMINATION OF A JOINT TENANCY OR HANDLING OF OTHER NONPROBATE ASSETS

Assets that pass outside of probate are outside the court's jurisdiction. Therefore, a personal representative or his or her attorney shall not request payment from a probate estate for work done concerning joint tenancy assets or other nonprobate assets, and any request for such relief shall be denied. However, this rule does not prevent a request for extraordinary fees where the termination of joint tenancy with a previously deceased joint tenant is necessary to clear title to property in the decedent's estate.

(Rule *7.30* amended and renumbered effective July 1, 2009; adopted as Rule *7.50* effective July 1, 1988.)

7.30 [RENUMBERED]

(Former Rule *7.30* renumbered as Rule *7.20* effective July 1, 2009.)

7.31 COURT INVESTIGATOR FEES FOR INVESTIGATION OF PETITION FOR PARTICULAR TRANSACTION

Pursuant to Probate Code section 3140, the court may, in its discretion, appoint a court investigator to evaluate a petition for a proposed transaction involving an incapacitated spouse's community property and report to the court regarding the transaction's advisability. Appointment of a court investigator for such an investigation shall result in an assessment against the petitioning party for the costs of the investigation. The fee amount is determined by the court on an annual basis and is subject to change. The assessed fee is payable within 30 days after the Assessment and Order for Payment is mailed by the Court Investigators Office.

(Rule *7.31* adopted effective July 1, 2009.)

7.31 [RENUMBERED]

(Former Rule *7.31* renumbered as Rule *7.21* effective July 1, 2009.)

7.32 NOTICE OF PETITION FOR DISTRIBUTION [REPEALED]

(Rule *7.32* repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.33 ACCOUNTING (PROBATE CODE SECTION 10900) [REPEALED]

(Rule *7.33* repealed effective July 1, 2009; adopted effective July 1, 1988; amended effective July 1, 1989.)

7.34 ACCOUNTS REQUIRED ANNUALLY [REPEALED]

(Rule *7.34* repealed effective July 1, 2009; adopted effective July 1, 1989.)

7.35 WAIVER OF ACCOUNTING (PROBATE CODE SECTION 933; 10954) [REPEALED]

(Rule *7.35* repealed effective July 1, 2009; revised effective July 1, 1989; adopted effective July 1, 1988.)

7.36 [RENUMBERED]

(Rule *7.36* renumbered as Rule *7.22* effective July 1, 2009.)

7.37 [RENUMBERED]

(Rule *7.37* renumbered as Rule *7.23* effective July 1, 2009.)

7.38 [RENUMBERED]

(Rule *7.38* renumbered as Rule *7.24* effective July 1, 2009.)

7.39 [RENUMBERED]

(Rule *7.39* renumbered as Rule *7.25* effective July 1, 2009.)

7.40 CREDITOR'S CLAIMS [REPEALED]

(Rule *7.40* revised effective July 1, 1989; adopted effective July 1, 1988.)

7.41 [RENUMBERED]

(Rule *7.41* renumbered as Rule *7.26* effective July 1, 2009.)

7.42 [RENUMBERED]

(Rule *7.42* renumbered as Rule *7.27* effective July 1, 2009.)

7.43 [RENUMBERED]

(Rule *7.43* renumbered as Rule *7.28* effective July 1, 2009.)

7.44 REQUIRED SHOWING (PROBATE CODE SECTION 12250) [REPEALED]

(Rule *7.44* repealed effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

7.45 [RENUMBERED]

(Rule *7.45* renumbered as Rule *7.50* effective July 1, 2009.)

7.46 [RENUMBERED]

(Rule *7.46* renumbered as Rule *7.51* effective July 1, 2009.)

7.47-7.49 [RESERVED]

PART TWO:
TRUSTS

7.50 BENEFICIARIES OF TESTAMENTARY TRUST TO BE LISTED IN PETITION FOR LETTERS TESTAMENTARY

All petitions involving a testamentary trust must set forth the names and last known addresses of all vested and contingent beneficiaries.

(Rule *7.50* amended and renumbered effective July 1, 2009; adopted as Rule *7.45* effective July 1, 1988.)

7.51 TRUSTEE FEES

a. Applicability of Rule

This rule applies to all trusts subject to the continuing jurisdiction of the court, to petitions for approval of trustee compensation, and to objections to petitions for trustee compensation. (Subd (a) adopted effective July 1, 2009.)

b. Presumption of Reasonable Compensation for Trustees

Trustee compensation shall be presumed reasonable if it does not exceed 1% (one percent) of the asset value of the estate. However, nothing in this rule limits the court's discretion to find as unreasonable a fee totaling less than 1%. (Subd (b) adopted effective July 1, 2009.)

c. Request for Additional Compensation

A trustee may request fees in excess of 1% (one percent) of the asset value of the estate. A trustee requesting such relief shall do one of the following:

(1) File a declaration from the beneficiaries indicating awareness of the fees being requested and a statement waiving objection to those fees.

(2) File a declaration detailing the services rendered justifying the fee requested.

(Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.46 effective July 1, 1988.)

(Rule 7.51 amended and renumbered effective July 1, 2009; adopted as Rule 7.46 effective July 1, 1988; previously amended effective July 1, 1988.)

7.51 MISCELLANEOUS [REPEALED]

(Rule 7.51 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.52 INFORMATION TO BE INCLUDED IN PETITIONS CONCERNING TRUSTS

All petitions concerning trusts shall indicate in the pleading title the Probate Code section(s) under which the petition is brought or which supports the relief requested. For example, a petition seeking orders concerning the internal affairs of a trust shall cite Probate Code section 17200 in the pleading title.

(Rule 7.52 adopted effective July 1, 2009.)

7.52 SCOPE OF GUARDIANSHIP RULES [REPEALED]

(Former Rule 7.52 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.53 GENERAL PROCEDURES FOR SPECIAL NEEDS TRUSTS

a. Establishment of Special Needs Trusts in Solano County

If a special needs trust is included as part of a minor's compromise or other judgment entered in Solano County and the trust is to be administered in Solano County, the following procedures shall be followed:

(1) A petition to approve the terms of the special needs trust shall be filed in the civil action or petition to approve minor's compromise. The judge assigned to hear the civil action or petition to approve minor's compromise shall approve the terms of the special needs trust per Probate Code section 3604.

(2) Once so approved and signed, the original special needs trust instrument and a copy of the order approving the trust shall be filed in a separate file and assigned a probate case number. No filing fee shall be charged for said filing as the trust instrument is the result of a petition filed to approve a minor's compromise claim per Probate Code section 3600 et seq. Government Code §70655.

(3) The party filing the special needs trust instrument per subsection (2) shall file a notice in the civil action file or the minor's compromise file indicating the case number assigned to the probate file containing the special needs trust.

(Subd (a) adopted effective July 1, 2009.)

b. Transfer of Special Needs Trusts into Solano County

Whenever a special needs trust is transferred into Solano County and the court file being transferred does not contain the original special needs trust instrument, the trustee shall provide the court with the original trust document within 90 days after the court file is received by Solano County. (Subd (b) adopted effective July 1, 2009.)

(Rule 7.53 adopted effective July 1, 2009.)

7.53 FORMS TO BE FILED AT COMMENCEMENT OF PROCEEDING [REPEALED]

(Former Rule 7.53 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.54 ACCOUNTINGS AND REPORTS OF SPECIAL NEEDS TRUSTS

a. Expenditures on Behalf of Beneficiary

In all accountings for special needs trusts, the trustee shall provide an explanation of any unusual or extraordinary expenses incurred by the trustee on behalf of the beneficiary. These include, but are not limited to, payment of all expenses associated with real property partially owned by the trust, payment of automobile insurance for a vehicle not owned by the trust, acquisition or maintenance of assets not ordinarily used by a beneficiary with the beneficiary's type of disability, and so forth. (Subd (a) adopted effective July 1, 2009.)

b. Hiring of Agents

The court acknowledges that trustees of special needs trusts often hire agents to advise them concerning the administration of the special needs trusts and the provision of services to the beneficiary. A trustee hiring such an agent shall specify in any report or accounting seeking approval of payment to said agent the type of and need for the services provided by the agent. The trustee shall also include a declaration from the agent concerning the hours spent working with the trustee and the amount of compensation sought. (Subd (b) adopted effective July 1, 2009.)

c. Parents as Caregivers to Child as Beneficiary

In an account or report indicating that a parent was hired to provide caregiver services to his or her child, the trustee shall provide the following information:

(1) A description of the services rendered by the parent that are above and beyond the care normally provided by a parent to a child.

(2) A description of the special skills possessed by the parent enabling him or her to perform these services.

(3) The benefit to the beneficiary of having the parent perform the services instead of a professional caregiver.

(4) The hours worked by the parent.

(5) The hourly rate being paid to the parent and a justification of that rate. Justification may include a comparison to the rate charged by a professional for the same or similar services.

(6) Whether caregiving services are being provided through IHSS and if so, the frequency and type of the services provided.

(7) Whether insurance is in place to cover the caregiver parent in case of injury and if so, the amount of the periodic premium being paid by the parent or the trust.

(Subd (c) adopted effective July 1, 2009.)

(Rule *7.54* adopted effective July 1, 2009.)

7.54 NOTICE OF PETITION FOR APPOINTMENT OF GUARDIAN OR TEMPORARY GUARDIAN [REPEALED]

(Rule *7.54* repealed effective July 1, 2009; adopted as Rule *7.52* effective July 1, 1989; amended effective July 1, 1992; amended and renumbered as Rule *7.54* effective July 1, 2008.)

7.55 COMPENSATION OF CONSERVATOR FROM TRUST

If a conservatee is also the beneficiary of a trust and the compensation of a conservator of the person is sought from the trust, a petition seeking approval of the amount of compensation payable to the conservator shall first be filed in the conservatorship matter. The petition shall include a declaration by the trustee as to whether there are sufficient funds in the conservatorship estate to allow for the compensation sought. A trustee shall not pay a conservator's compensation without a court order approving said compensation by the judge assigned to hear the conservatorship matter.

(Rule *7.55* adopted effective July 1, 2009.)

7.55 APPOINTMENT OF INVESTIGATOR [REPEALED]

(Rule *7.55* repealed effective July 1, 2009; adopted as Rule *7.53* effective July 1, 1989; amended effective July 1, 1992; amended

and renumbered as Rule 7.55 effective July 1, 2008.)

7.56 COURT INVESTIGATOR FEES [REPEALED]

(Rule 7.56 repealed effective July 1, 2009; adopted as Rule 7.54 effective July 1, 1989.)

7.57 TEMPORARY GUARDIANSHIPS [REPEALED]

(Rule 7.57 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.58 EX PARTE APPLICATIONS FOR TEMPORARY GUARDIANSHIP OR OTHER TEMPORARY ORDERS [REPEALED]

(Rule 7.58 repealed effective July 1, 2009; adopted as Rule 7.55 effective July 1, 1988.)

7.59 CONTESTED GUARDIANSHIPS [REPEALED]

(Rule 7.59 repealed effective July 1, 2009; adopted as Rule 7.56 effective July 1, 1988.)

7.60 ORDERS FOR VISITATION IN GUARDIANSHIPS [REPEALED]

(Rule 7.60 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.61 GUARDIANSHIPS OF THE ESTATE - INVENTORIES AND ACCOUNTINGS; SERVICE OF ACCOUNTINGS; NOTICE OF HEARINGS ON OBJECTIONS TO ACCOUNTINGS [REPEALED]

(Rule 7.61 repealed effective July 1, 2009; adopted as Rule 7.59 effective July 1, 1992.)

7.62 GUARDIANSHIPS OF THE ESTATE: REPORTS ACCOMPANYING ACCOUNTS [REPEALED]

(Rule 7.62 repealed effective July 1, 2009; adopted as Rule 7.61 effective July 1, 1989.)

7.63 ALLOWANCE OF FEES IN GUARDIANSHIP PROCEEDINGS [REPEALED]

(Rule 7.63 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.64 INVESTMENTS BY GUARDIAN OF THE ESTATE [REPEALED]

(Rule 7.64 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.65 APPOINTMENT OF MINOR'S COUNSEL [REPEALED]

(Rule 7.65 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.66 TERMINATION OF GUARDIANSHIP [REPEALED]

(Rule 7.66 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.67 COOPERATION WITH COURT INVESTIGATOR [REPEALED]

(Rule 7.67 repealed effective July 1, 2008; adopted effective July 1, 1988.)

7.68 OTHER PROTECTIVE PROCEEDINGS FOR MINORS [REPEALED]

(Rule 7.68 repealed effective July 1, 2008; adopted effective July 1, 1988.)

7.69 PETITION FOR APPOINTMENT [REPEALED]

(Rule 7.69 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.70 APPOINTMENT OF COURT INVESTIGATOR [REPEALED]

(Rule 7.70 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.71 TEMPORARY CONSERVATORSHIP [REPEALED]

(Rule 7.71 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.72 LEGAL CAPACITY OF CONSERVATEE [REPEALED]

(Rule 7.72 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.73 INDEPENDENT EXERCISE OF POWERS [REPEALED]

(Rule 7.73 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.74 BOND - CONDITIONS - AMOUNT [REPEALED]

(Rule 7.74 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.75 ACCOUNTINGS IN CONSERVATORSHIP PROCEEDINGS [REPEALED]

(Rule 7.75 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.76 FREQUENCY OF ACCOUNTS [REPEALED]

(Rule 7.76 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.77 ASSESSMENT AND ORDER FOR COURT INVESTIGATION [REPEALED]

(Rule 7.77 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.78 ALLOWANCE OF FEES [REPEALED]

(Rule 7.78 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.79 ORDERS FOR SUPPORT AND SUBSTITUTED JUDGMENT [REPEALED]

(Rule 7.79 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.80 INVESTMENT BY CONSERVATOR [REPEALED]

(Rule 7.80 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.81 TERMINATION [REPEALED]

(Rule 7.81 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.82 APPOINTMENT OF SUCCESSOR CONSERVATOR [REPEALED]

(Rule 7.82 repealed effective July 1, 2009; adopted effective July 1, 1988.)

APPENDIX 7-A:
PROBATE RULES CONVERSION TABLE
Effective July 1, 2009

Rule Title	New Rule Number	Former Rule Number
Scope of Probate Rules	**7.1**	**N/A**
Use of Judicial Council Forms; Format of Pleadings	**7.2**	**7.1**
Signatures and Verifications of Pleadings	**7.3**	**7.2**
Titles [Repealed]	**N/A**	**7.3**
Copies of Orders [Repealed]	**N/A**	**7.4**
Wills and Codicils as Exhibits to Petition [Repealed]	**N/A**	**7.5**
Bonding of Personal Representative	**7.4**	**7.6**
Declination of Nominated Executor	**7.5**	**7.7**
Fees [Repealed]	**N/A**	**7.8**
Calendaring [Repealed]	**N/A**	**7.9**
Notices	**7.6**	**7.10**

Notification to Court of Continuances, Drops, or Stipulations	7.7	N/A
Pregrants in Probate Matters	7.8	N/A
Appearances at Hearings	7.9	7.11
Short Cause Calendar [Repealed]	N/A	7.12
Long Cause Calendar [Repealed]	N/A	7.13
Ex Parte Applications	7.10	N/A
Appointment of Special Administrator	7.11	7.14
Information to be contained in Petitions for Probate of Will and for Letters Testamentary; for Letters of Administration; or for Letters of Administration with Will Annexed (Probate Code section 8000 et seq.)	7.12	7.15
Attorney's Names [Repealed]	N/A	7.16
Proof of Wills [Repealed]	N/A	7.17
Preparation of Orders	7.13	7.18
Material to be Included in Probate Orders [Repealed]	N/A	7.19
Approval of Funeral and Internment Claims [Repealed]	N/A	7.20
Interest on Funeral and Internment Claims	7.14	7.21
Mode of Filing Creditors' Claim [Repealed]	N/A	7.22
Real Estate in Inventory and Appraisal	7.15	7.23
Cash Deposit	7.16	7.24
Second Deeds of Trust	7.17	7.25
Earnest Money Deposit by Overbidder	7.18	7.26
Appearances by Counsel	7.19	7.27
Overbids [Repealed]	N/A	7.28
Increased Bid Forms [Repealed]	N/A	7.29

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Sonoma County
Probate Rules

Effective January 1, 2010

RULE 6
RULES APPLICABLE TO PROBATE PROCEEDINGS

6.1 INTRODUCTION (Eff. 1/1/97; Rev. 1/1/10)

6.2 CALENDAR AND PROCEDURAL MATTERS (Eff. 1/1/97; Rev. 1/1/10)

6.3 ACCOUNTINGS FOR DECEDENTS' ESTATES (Eff. 1/1/97; Rev. 1/1/09)

6.4 CONSERVATORSHIPS AND GUARDIANSHIPS (Eff. 1/1/97; Rev. 1/1/10)

6.5 COMPENSATION OF FIDUCIARIES AND ATTORNEYS (Eff. 1/1/97; Rev. 7/1/09)

6.6 BONDS (Eff. 1/1/97; Rev. 1/1/10)

6.7 SALES OF REAL PROPERTY (Eff. 1/1/97; Rev. 1/1/99)

6.8 RULES REGARDING DECEDENT'S ESTATES (Eff. 1/1/97; Rev. 1/1/10)

6.1 INTRODUCTION

A. General

The following Probate Rules for Sonoma County are to guide parties as to certain specific local policies and procedures and to promote the efficient disposition of the business of the Court. The rules do not attempt to restate or summarize statutory or case law or estate administration in general. These matters are authoritatively dealt with in such publications as California Decedent Estate Practice, California Trust Administration and California Conservators published by the Continuing Education of the Bar.

The rules, although binding on parties, may be departed from in proper instances in the discretion of the Court.

B. Contact Information

One or more of the following offices may be involved in matters presented to the Probate Court.

1. Website: For current contact information, parties should refer to the court's website at: http://www.sonomasuperiorcourt.com/index.php?v=probate or http://www.sonomasuperiorcourt.com/index.php?v=fcs All local forms referred to in this rule are available at and can be downloaded from: http://www.sonomasuperiorcourt.com/index.php?v=forms/index

2. Clerk of the Court: The address of the Clerk is 600 Administration Drive, Room 107-J, Santa Rosa, CA 95403.

3. Probate Court: Matters set for hearing with the Probate Court will be called in Department 19, located at 3055 Cleveland Ave., Santa Rosa, CA 95403.

4. Probate Court Examiner: The address for the Probate Court Examiner is 3055 Cleveland Ave., Santa Rosa, CA 95403. The telephone number is (707) 521-6591.

5. Office of the Probate Court Investigator: The address for the Office of the Probate Court Investigator is 600 Administration Drive, Santa Rosa, CA 95403. The telephone number is (707) 521-6586.

6. Family Court Services: The Office of Family Court Services is located at 475 Aviation Blvd., Ste. 110, Santa Rosa, CA 95403. The telephone number is (707) 521-6800.

(Eff. 1/1/1997; Rev. 1/1/2006, 1/1/2007, 7/1/2007, 7/1/2009, 1/1/2010)

6.2 CALENDAR AND PROCEDURAL MATTERS

A. General Guidelines

1. General Probate Matters

One department of the Superior Court shall be designated by the Supervising Judge as the Probate Department to hear general probate matters (i.e., excluding limited and LPS conservatorships and guardianships of the person). General probate matters will be calendared and heard at such times and places as shall be designated by the Supervising Judge of the Civil Division.

2. Calendar Day on Judicial Holiday

When the calendar day is a judicial holiday the calendar will be heard on a day and time as designated by the Supervising Judge of the Civil Division.

B. Calendaring Guidelines

1. Calendaring Hearings

Except as otherwise indicated in these Rules, all probate petitions concerning decedent's estates, trusts, conservatorships and guardianships of the estate are to be calendared for hearing on the regular probate calendar.

2. Special Needs Trusts

All petitions for an order approving a Special Needs Trust or for an order directing payment or delivery of any property or funds to a Special Needs Trust, pursuant to Probate Code §§ 3602, 3611, or other authority, shall be scheduled for hearing on the probate calendar. When such a petition is a first-filed paper or arises out of a civil matter not pending before the Probate Court, the petition shall be filed with the Probate Clerk as a new case and given a new case number.

3. Guardianship Petitions

a. Petitions for the appointment of a guardian of the estate only, and all petitions concerning the administration of an existing guardianship of the estate, are to be calendared for hearing on the regular probate calendar.

b. All other petitions for the appointment of the guardian of the person (including those involving both the guardianship of the person and the estate) are to be calendared for hearing on the guardianship calendar, to be heard at such times and places as shall be designated by the Supervising Judge of the Civil Division.

4. Limited Conservatorships

a. Petitions for the appointment of a limited conservator of an adult alleged to be developmentally disabled who is in placement at the Sonoma Developmental Center (SDC) are to be calendared for hearing on the SDC calendar, to be heard at such times and places as shall be designated by the Supervising Judge of the Civil Division.

b. All other petitions for the appointment of a limited conservator for an adult alleged to be developmentally disabled are to be calendared for hearing on the LPS calendar.

C. Filing Procedures

All petitions and supporting documents in matters to be heard on the probate calendar shall be filed with the Probate Clerk, at least 22 days prior to the hearing, allowing sufficient time for notice and publication as required by law.

1. Procedure for Requesting Hearing Date

In conservatorship and guardianship matters, petitioners shall comply with Local Rule 6.4 regarding contacting the Office of the Probate Court Investigator to select a hearing date. In all other matters, Petitioner may select a hearing date by entering the date on the papers presented for filing with the Clerk. In selecting a hearing date, Petitioner shall take into consideration the requirements of notice, publication and filing proofs of service.

2. Hearing Dates Subject to Change

The hearing date may be subject to change by the Court, where necessary for calendar control purposes. Such changes may be minimized by confirming a date in advance with the Office of the Probate Court Investigator or the Court Examiner, as applicable to the case.

D. Submission of Proposed Orders and Other Pleadings Before Hearing Date

1. Orders

Proposed orders shall be submitted to the Probate Clerk at the time of filing the petition.

2. Supporting Papers

Supporting papers shall be filed at the time of filing the Petition, except as otherwise provided in the Probate Code or these Local Rules.

3. Proofs of Service

Proofs of Service for the initial petition shall be filed with the Clerk at least five (5) days prior to the day of hearing. Any other Proofs of Service shall be filed with the Clerk contemporaneously with the papers to which they pertain.

4. Proofs of Publication

Proofs of Publication shall be filed with the Clerk at least five (5) days prior to the day of hearing.

5. Copies Required for Court Staff

Copies of all filed pleadings and proposed orders in conservatorship and guardianship of the estate matters are required to be served on the Office of the Probate Court Investigator. Copies of all filed pleadings and proposed orders in decedent's estate and trust matters are required to be served on the Probate Examiner's Office.

E. Supplemental or Opposition Papers

In order for supplemental or opposition papers to be considered by the Court prior to the hearing, the documents must be first filed with the Court, and served as follows:

1. Guardianships of the Person

Copies of all supplemental or opposition papers must be served on Family Court Services at least one week before the hearing, with the scheduled hearing date noted on the face sheet.

2. All Conservatorships and Guardianships of the Estate Only

Copies of all supplemental or opposition papers must be served on the Office of the Probate Court Investigator at least one week before the hearing, with the scheduled hearing date noted on the face sheet.

3. Decedent's Estates and Trust Matters

Copies of all supplemental or opposition papers must be served on the Probate Court Examiner at least one week before the hearing, with the scheduled hearing date noted on the face sheet.

F. Hearings and Tentative Rulings

1. Notices of Hearing

Notices of hearing on cases scheduled for hearing on the probate calendar shall indicate that the time for the commencement of the calendar is 8:30 a.m.

2. Tentative Rulings - Probate Calendar

During the court day preceding each weekly probate calendar, commencing at 11:00 a.m., or earlier if feasible, the Court will cause to be recorded a tentative ruling for each matter noticed on such calendar. The tentative ruling may be obtained by telephoning (707) 521-6881 (Opt. #1) or by accessing the Court's Website.

a. Parties who do not object to the tentative ruling need not appear at the hearing, unless the ruling requires appearances.

b. Any interested person who wishes to be heard in relation to the tentative ruling must 1) notify the probate clerk at (707) 521-6893 by 4:00 p.m. on the court day before the hearing, 2) notify all parties or their attorneys of her/his intent to appear, no later

than 4:00 p.m. on the day before the hearing, AND 3) announce her/his appearance to the probate clerk in the courtroom at 8:30 a.m. on the day of the hearing.

c. Unless notification to the Probate Clerk has been given as provided above, the tentative rulings shall become the rulings of the court when announced by the courtroom clerk on the day of the hearing.

3. Tentative Rulings - Guardianship Calendar

During the court day preceding each weekly guardianship calendar, commencing at 11:00 a.m., or earlier if feasible, the Court will cause to be recorded a tentative ruling for each matter noticed on such calendar. The tentative ruling may be obtained by telephoning (707) 521-6881 (Opt. #1) or by accessing the Court's Website. The tentative rulings will also be posted at the guardianship department.

a. Parties who do not object to the tentative ruling need not appear at the hearing, unless the ruling requires appearances.

b. Any interested person who wishes to be heard in opposition to a tentative ruling or to a petition must also notify all other interested parties, or their respective attorneys, of the intent to appear. The notification must be completed no later than 4:00 p.m. on the court day immediately preceding the day of the hearing.

4. Appearances

No appearances are required for pre-approved matters unless an interested person has asked to be heard in response to the tentative ruling and given the required notice of such a request.

G. Continuances

1. Continuance Requested by Counsel

Continuances requested by counsel may be made only in court or through the probate clerk. A continuance will not be granted if there is opposing counsel unless the request is made in open court or by written stipulation of all counsel to a date arranged by the probate clerk. If the matter has been specially set, it may not be continued without the written stipulation of all counsel and the approval of the court scheduled to hear the matter. Any matter assigned to or set on the Short Cause Calendar or the Civil Master Trial Calendar shall be governed by the Superior Court Rules applicable to those calendars.

2. Limitation on Continuances

Normally no more than three continuances will be allowed before the matter is dismissed without prejudice

H. Contested Matters

1. Written Objections

a. Before the Court will hear any contested proceedings, the opponent as to a petition, accounting or other matter scheduled for hearing shall file verified, written objections at least five (5) court days prior to the hearing stating the grounds for such objection or opposition.

b. Interested persons who oppose the granting of a petition for appointment of a guardian are encouraged to use Sonoma County form PR-9 (Objection(s) to Appointment of Guardian of the Person) to file objections.

2. Notice of Objections

The party or attorney of the party opposing any scheduled petition, accounting or any other matter shall notify the attorney for petitioner of his opposition and any intended appearance at least two court days before the hearing on the petition, accounting or other matter unless good cause is shown.

3. Meet and Confer Requirement

In the event of any contest or objection to any petition on the probate calendar, the parties or his or her respective attorneys shall make a reasonable and good faith attempt to informally resolve the controversy at a face-to-face conference, before any hearing of the contested petition. If such resolution is not possible, then each party shall file a Statement of Issues AND ADR Information Sheet (Sonoma County form #CV-2).

4. Statement of Issues or Settlement

At least five (5) court days before the hearing, each party shall either (1) notify the Probate Clerk in the Superior Court Clerk's office or the probate department that the controversy has been resolved; or (2) file and serve the Statement of Issues. Each Statement of Issues must:

a. Indicate that the parties or his or her respective attorneys have met face-to-face,

b. identify the substantial issues in the controversy, with references to any supporting evidence and/or legal authority,

c. include each party's opinion of any barriers to settlement,

d. Provide an estimate of the time requirement for the hearing or resolution,

e. Include each party's opinion as to the appropriate method for resolving the controversy (i.e., mediation, arbitration, short cause trial, etc.).

5. Contested Matters on Probate Calendar

When the hearing on a contested matter is estimated to be 20 minutes or less, the hearing normally will be held before the Probate Judge on the regular probate calendar.

6. Transfer to Trial Calendar

If the hearing on a contested matter is estimated to exceed twenty (20) minutes or a jury trial is demanded, and counsel appear at the probate calendar, the matter may be transferred to the short cause calendar or may be assigned directly to one judge for all purposes.

7. Continuance to Permit Filing of Contest

When a petition for the probate of a Will is called for hearing and an attorney or party appears and orally objects and declares that a written contest will be filed, the Court will continue the hearing for a reasonable length of time not exceeding four (4) weeks with the condition that if such written contest is not actually on file prior to the continued date, the hearing will nevertheless proceed as if no objection had been made by said attorney or party.

I. Ex Parte Matters

1. Presentation of Petition

All ex parte probate matters shall be presented to the Probate Judge at the times and locations as designated except as shown in rule 17.6 herein. Filing fees must be paid and a case number assigned before a party presents an ex parte application.

2. Urgent situations—Ex Parte Probate Calendar

If a party has reason to believe that orders are urgently needed to prevent irreparable harm to person or property, the petition may be presented on the civil/probate ex parte calendar. The petition must be accompanied by a declaration setting forth the facts upon which the petitioner is basing the allegation. The petition must be accompanied by a declaration identifying the persons entitled to notice under the applicable sections of the Probate Code or these rules, and either proof of service of notice or a statement of the facts which the petitioner believes justifies an order dispensing with notice.

3. Other Matters Not Requiring Hearing—"Ready Matters"

Petitions may be presented to the Probate Clerk for submission to the Probate Judge, when the following circumstances exist:

a. The Order requested is one for which no hearing is required, or the Order is necessary in less time than is required to obtain a hearing date on the probate calendar.

b. Either notice is not required in accordance with the Probate Code or these Rules, or notice has been waived by all persons entitled to notice.

c. The petition is not contested.

4. Contents of Petition

A petition for ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing the order. Conclusions or statements of ultimate facts are not sufficient, and a foundation should be shown for the petitioner's personal knowledge.

5. Special Notice Allegation

All petitions for ex parte orders must contain a statement on special notices. The statement shall either recite that no request for special notice is in effect or shall list the parties requesting special notice and attach the specific waivers of notice by such parties or proof of service on such parties.

6. Notice to Counsel/Opposing Party

Notice shall be provided in accordance with the Rules of Court applicable to civil ex parte matters.

7. Notice to Court Investigator

Notice to the Probate Court Investigator shall be given when required under Local Rule 6.4.

8. Order Must Accompany Petition

Except where a Judicial Council or a local form is used, a petition for an ex parte order must be accompanied by a separate order complete in itself. It is not sufficient for such order to provide merely that the application has been granted, or that the sale of property or security set forth in the petition has been approved.

J. Probate Referee Procedures

1. Appointment of Probate Referee

An original and one copy of all applications for appointment of a probate referee shall be submitted to the office of the Clerk on Sonoma County form #PR-1 or in substantially the same form. Application should not be made earlier than the time at which the order of appointment of executor, administrator, guardian or conservator is submitted.

2. Submission of Inventory

Inventories and appraisements for initial appraisals, or for reappraisals for sales, should be submitted to the appointed referee not less than three (3) weeks prior to any court appearance involving a sale or distribution of any assets contained in such Inventory and Appraisement.

3. Statement Regarding Bond

Items 5 through 8 of the Inventory and Appraisement shall be fully completed as to the particulars of the bond or assurance to the estate in all matters requiring the filing of an Inventory and Appraisement except for Spousal Property Petitions.

K. Compliance with Filing Deadlines

All Probate Code and Court ordered due dates for filing shall be strictly observed (e.g., inventories, accountings, status reports and receipts on blocked accounts). Failure to comply with statutory or Court ordered filing deadline requirements may result in imposition of surcharges and/or sanctions absent a showing of good cause for the late filing.

(Eff. 1/1/1997; Rev. 7/1/2006, 1/1/2007, 7/1/2007, 7/1/2009, 1/1/2010)

6.3 ACCOUNTINGS FOR DECEDENTS' ESTATES

A. General Format

Accounting format details and contents shall be in strict conformance with California law, including but not limited to the Probate Code and California Rules of Court.

B. Supplemental and Amended Accounts

A supplemental account in a decedent's estate shall include only receipts and disbursements occurring since the ending date of the last filed account. Generally a supplemental account is not to be used to amend or correct the last filed account. An amended account may be filed to amend or correct such last account. Any supplemental or amended account shall be noticed for hearing unless the Court by order dispenses with notice.

C. Original Account Statements in Conservatorship and Guardianship Matters

Wherever the Probate Code requires the filing of original financial account, billing and/or escrow statements, such statements will be "lodged" with the clerk and not filed. The original statements will be returned to the party filing the account after the Court's determination of the Account becomes final. Statements shall be organized by account, and then chronologically for each account. The account statements shall not be attached to the pleadings but contained in an 9" x 12" envelope with the case title and number written on it, together with a brief description of the contents (e.g. "Original bank statements for the account period XXXXX to XXXXX"), which envelope shall be prominently marked "CONFIDENTIAL". The statements shall also be accompanied by a self-addressed envelope of sufficient size and with sufficient postage affixed for the return of the statements after the determination of the account becomes final.

(Eff. 1/1/1997; Rev. 1/1/1999, 7/1/2007, 1/1/2009)

6.4 CONSERVATORSHIPS AND GUARDIANSHIPS

A. Conservatorship Filings

In all cases, a Petition for Appointment of Probate Conservator must be filed with the Clerk of the Court and a case number issued. Conservatorship petitions and hearings should be set for hearing, based upon the severity of the proposed conservatee's impairments and risk of harm pending hearing, as follows:

1. Probate Conservatorships

Prior to selecting a hearing date, petitioner shall contact the Office of the Sonoma County Court Investigator to determine the amount of time it will require to complete the required investigation and report.

2. Temporary Conservatorship

Where the petitioner believes that the proposed conservatee will suffer harm or substantial loss prior to the hearing date on the Petition for Appointment of Probate Conservator, petitioner may also file a Petition for Temporary Conservatorship. In all such cases, the Petition for Appointment of Probate Conservator must first be on file in the clerk's office and a case number issued before a Petition for Temporary Conservatorship will be heard.

a. Regular Notice:

Normally, a Petition for Temporary Conservatorship should be noticed for hearing at the time normally set aside for probate matters. Petitioner should contact the Office of the Sonoma County Court Investigator to determine a hearing date next available allowing for at least ten (10) days' notice of the petition.

b. Emergency Circumstances:

In very rare circumstances where the proposed conservatee is in immediate and grave danger of physical or irreparable financial harm, petitioner may notice the Petition for Temporary Conservatorship to be heard on the ex parte calendar. Petitioner should contact the Office of the Sonoma County Court Investigator as soon as the necessity for such a hearing becomes apparent.

B. Required Documents in Conservatorship Cases

In addition to the pleadings and papers normally required in a conservatorship matter, the following special instructions apply:

1. Appointment of Court Investigator

The Sonoma County Court Investigator shall be appointed for all conservatorship cases (excluding LPS conservatorships). Petitioner must submit the proposed Order Appointing Court Investigator to the Clerk with the first-filed Petition for Appointment of Probate Conservator, requesting appointment of the Office of the Sonoma County Court Investigator, with Boxes next to paragraphs 1 and 3 checked, at a minimum.

2. Conservatorship Handbook

The HANDBOOK FOR CONSERVATORS is available from the Clerk of the Court for a fee, or at http://www.courtinfo.ca.gov/reference/documents/handbook.pdf. The required DUTIES OF CONSERVATOR AND ACKNOWLEDGMENT OF RECEIPT OF HANDBOOK shall be submitted with the first filed Petition for Appointment of Probate Conservator.

3. Notification of Change of Contact Information

Any time the conservator/guardian or conservatee/ward has a change of contact information, the Notification of Change of Contact Information (Sonoma County Local Form PR-3) shall be filed and served on the Office of the Probate Court Investigator.

4. Confidential Contact Information Form

The Confidential Contact Information Form (Sonoma County Form PR-12) must be filed with all petitions for appointment of a conservator, including appointment of temporary, successors or co-conservators, and all petitions for approval of accounts of a conservatorship estate. The Confidential Contact Information Form shall be marked as "CONFIDENTIAL" and placed in the "SECRET" section of the court file.

C. Court Investigator Procedures

1. Calendaring Conservatorship Hearings When Investigation Required

When an investigation is required pursuant to Probate Code § 1826 and 1851, the petitioner or his/her attorney shall contact the Office of the Sonoma County Court Investigator to determine the amount of time required to complete the investigation and report and to select a hearing date.

2. Documents to Be Served on Court Investigator

a. Copies of ALL papers filed in each conservatorship proceeding, and the proposed Order for any petition filed, shall be served on the Office of the Sonoma County Court Investigator at the time of filing. Service on the Court Investigator shall be shown on the Proof of Service filed with the clerk.

b. Where a party intends to submit a Petition for Temporary Conservatorship on an ex parte basis, copies of ALL papers filed or presented to the court in support of or in opposition to such a petition shall be served on the Office of the Sonoma County Court Investigator no later than five (5) court days prior to the ex parte hearing.

c. Any opposition to an ex parte petition shall be served on the Office of the Probate Court Investigator no later than one full day prior to the ex parte hearing.

D. Procedures Specific to Guardianship Matters

1. Family Court Services

The Office of Family Court Services oversees initial and subsequent probate petitions involving the guardian of the person, including cases involving both guardianship of the person and estate.

2. Report of Proposed Guardian

The Report of Proposed Guardian Form (Sonoma County Form PR-2) shall be filed with any Petition for Appointment of Guardian.

3. Documents to Be Served on Court Investigator and/or Family Court Services

a. Copies of ALL papers filed in cases involving guardianship of the person, including cases involving guardianship of both person and estate, shall be served on the Office of Family Court Services at the time of filing, including proposed Orders for any Petition filed. Service on Family Court Services shall be shown on the proof of service filed with the clerk. The Office of Family Court Services may recommend whether or not the Court should require an investigation under Probate Code § 1513.

b. Copies of ALL papers filed in cases involving guardianship of the estate only, and proposed Orders for any petition filed, shall be served on the Office of Sonoma County Court Investigator at the time of filing. Service on the Office of Sonoma County Court Investigator shall be shown on the proof of service filed with the clerk.

4. Temporary Guardianship Petitions

a. Applications for Temporary Guardianships of the Person may be submitted to the Sonoma County Court Clerk's Office, Probate Division Room 107J, Monday through Friday, during normal business hours.

If the same day review is sought, the application must be submitted between 8:00 a.m. and 8:30 a.m. Applications submitted after 8:30 a.m. will be sent to the reviewing judge on the following business morning.

Orders will be available for pickup after 2:00 p.m. on the day the order is signed.

A party or attorney for a party can call (707) 521-6893 to be informed of the status of the application.

b. Opposition papers may be submitted in person at the Sonoma County Court Clerk's Office, Probate Division, Room 107-J. A copy of the opposition papers shall also be served personally or by fax on the opposing party by 8:00 a.m. on the day of judicial review. If service of the opposition papers is not possible, an ex parte declaration shall be filed providing the reasons for the lack of service. (Sonoma County Form FL-016).

c. Judicial review of the applications for ex parte orders shall be conducted Monday through Friday beginning at 8:30 a.m.

d. Notice: The moving party must give notice of the ex parte request. The notice SHALL include copies of ALL papers submitted to the court. This notice requirement can be waived by the court if (1) notice is impossible, or (2) notice would frustrate the very purpose of the order, or (3) immediate and irreparable harm could be suffered if notice were given. (Sonoma County Form FL-016 should accompany the application.)

E. Independent Powers under Probate Code §2591 et. seq.

The provisions of this section E apply both to conservatorship and guardianship. For simplicity only, the terminology for conservatorships is used.

1. Necessity Required

The conservator of the estate has broad powers to act for the conservatee's benefit under the Probate Code. The Court will generally limit a grant of Independent Powers under Probate Code §2590 et. seq. to specific factual situations where necessity requires independent powers.

2. Special Rules for Independent Powers

The following rules shall apply to all cases involving requests for independent powers, except LPS conservatorships:

a. Temporary Conservatorship of the Estate: Independent powers will be granted in a temporary conservatorship of the estate only in unusual situations upon a showing of good cause.

b. Factual Showing: Any request for independent powers shall be accompanied by an affidavit or declaration setting forth the facts which explain why: (1) the power requested is needed to administer the estate or protect the conservatee; and (2) granting such power would be to the advantage, benefit and in the best interests of the estate and the conservatee.

c. Specific Enumeration of Powers: Each power must be described in detail. Quoting the specific language of the subsection enumerating the requested power is preferred. It is not sufficient to incorporate by reference Probate Code §2591 in the petition.

d. Real Property Description: Where the power to sell real property is requested, the request shall describe the real property to be sold by the street address or legal description, and whether or not the property is the conservatee's home or former home. The notices of the request shall include the street address.

e. Court Confirmation of Real Property Sales: Where the independent power to sell real property is granted, the Court will normally require the sale be returned to the court for confirmation. This requirement may be waived by the Court upon showing of good cause.

f. Enumerated Special Powers in Order and Letters: Any special powers granted must be set forth in detail in the Order and in the Letters of Conservatorship. In addition, if the power to sell real property has been granted, the Order and Letters shall describe the property to be sold by street address or legal description, and whether court confirmation of the sale is required.

F. Conservatorship/Guardianship Accountings

1. Format

Accounts of conservators and guardians shall follow the format prescribed in these Local Rules for decedents' estates in the Probate Code, and California Rules of Court.

2. Adequacy of Bond

Reports of conservators and guardians shall state the total amount of the current bond and whether additional bond is necessary.

The report shall set forth the calculation of the minimum bond amount, including the amount for recovery. Each report should also specify any blocked bank accounts or assets and the current value of any such assets. Any significant changes in the value of assets should be reported, together with the effect on the adequacy of the bond.

3. Requests for Extension of Accountings

Extensions to file accounts in conservatorships and guardianships may be approved in the court's discretion. When requesting an extension, the conservator/guardian shall do so by filing an ex parte application and declaration in support of the extension as a "Ready Matter" under Local Rule 6.2.

4. Waiver of Accounts

a. General Rule. Except as noted below, no request or petition for waiver of any account or final account (upon the death of the conservatee or minor) in any conservatorship or guardianship will be approved.

b. Small Estates. Waivers of Account in conservatorships and guardianships may be approved for small estates in the court's discretion under the provisions of Probate Code §2628. The conservator/guardian shall request the waiver of account by completing and filing the local form, PR6, and submitting the request as a "Ready Matter" as described in Local Rule 6.2.

After the court has ordered a waiver of accounting in either a conservatorship or guardianship, the conservator/guardian shall either biennially file the local form PR-6 if the estate continues to meet the conditions of Probate Code §2628 to waive an account, or file an account and report.

c. Guardianship Final Account Waivers. Waivers of final guardianship accounts on termination are discouraged. Where the ward waives the final account, the court may require the ward to be present at the hearing.

G. Final Distribution in Conservatorships and Guardianships.

1. Investigator's Assessment on Final Accounting

Prior to the filing of a Petition for Termination of a conservatorship, counsel shall contact the Court Investigator to determine the Court Investigator's assessment of the conservatorship estate for services rendered. A request to pay the assessment and the amount of the assessment shall be included in the petition and final account and order thereon.

2. Small Estates

If the value of the conservatorship/guardianship estate does not exceed the amount determined under Probate Code § 13100 and distribution is intended by affidavit procedure pursuant to Probate Code § 13101, notice of hearing, a copy of the final account and report of the conservator/guardian, and a copy of the petition for final distribution, shall be served on the successor(s) of the deceased conservatee/ward.

3. Other Probate Estates

In all other cases, a petition for final distribution upon the death of conservatee or ward shall be approved only after appointment of a personal representative of the estate of the conservatee/ward. The final account and petition for distribution of the conservator/guardian shall identify the personal representative and the court and case number of the probate proceeding for the deceased conservatee/ward. Notice of hearing, a copy of the final account and report of conservator/guardian, and a copy of the petition for final distribution, shall be served on the personal representative of the estate of the deceased conservatee/ward.

H. Limited and LPS Conservatorships

1. Limited Conservatorship Filings

Every conservatorship involving a developmentally disabled proposed conservatee shall be filed as a limited conservatorship proceeding.

2. Disclosure of Developmental Disability

The involvement of a developmentally disabled conservatee shall be clearly set forth in all conservatorship and guardianship petitions and accountings.

3. Limited Conservatorships Regional Center

a. Calendar Setting if Regional Center Report Required

Any conservatorship proceeding requiring a Regional Center report shall be set at least thirty (30) days after mailing notice of the proceeding to the Regional Center, to allow the Regional Center report to be filed prior to the hearing.

b. Regional Center and Public Defender Appointment

The Order Appointing Regional Center (Sonoma County Local Form # PR-4) may be utilized to facilitate ordering the Regional Center report and appointment of the Public Defender to represent the conservatee. Such Orders shall be submitted with the initial Petition.

4. Review of General Conservatorships

In existing general conservatorships involving a developmentally disabled conservatee the court may direct that a new petition for conservatorship be filed under the limited conservatorship code provisions.

5. Accountings

Any accounting required in LPS or limited conservatorship matters shall comply with accounting requirements in other Sonoma County conservatorship estate matters unless otherwise directed by the court designated to hear the LPS calendar. A copy of limited conservatorship or LPS accountings shall be furnished to the Office of the Probate Court Investigator at the time of filing.

6. Closed Status of Reports

Reports by a Regional Center and the Office of the Probate Court Investigator, and other documents or materials containing sensitive information filed in LPS and limited conservatorship hearings, shall be maintained in a confidential status in the case file with disclosure only to authorized persons pursuant to Court order.

(Eff. 1/1/1997; Rev. 7/1/2006, 1/1/2007, 7/1/2007, 1/1/2008, 7/1/2009, 1/1/2010)

6.5 COMPENSATION OF FIDUCIARIES AND ATTORNEYS

A. Fees and Commissions in General.

All requests for compensation of fiduciaries and attorneys in decedent's estates, guardianship, conservatorship and trust proceedings shall be submitted in strict compliance with the Code of Civil Procedure, Probate Code, California Rules of Court, and these local rules.

B. Fees for Extraordinary Services in Decedents' Estates

1. Each request for fees for extraordinary services will be considered on its individual merits. Such services may include, but shall not be limited to, leases and foreclosures of real property, tax matters (including preparation of returns, audits and tax litigation), operating a business, heirship proceedings, special services that may be necessary for the personal representative or attorney to perform, and those matters specifically mentioned in the California Rules of Court.

2. Determination of Entitlement and Amount

In addition to the factors set forth in California Rules of Court, the Court may consider the following factors, among others, in exercising its discretion in any application for fees for extraordinary services:

a. Time devoted to the matter categorized by subject matter of services provided. The Court must be provided with a statement of facts containing sufficient information in order to enable it to analyze the reasonableness of the rate and the amount of time devoted to the matter. Detailed time records may be provided to support the statement of facts, but are not required in all cases.

b. The benefits of the services to the estate. It is recognized that the representative or his or her attorney may occasionally be under a duty to pursue certain matters which do not provide a financial gain to the estate. Such services may nevertheless be compensable.

c. Whether, if not performed by the attorney or personal representative, the extraordinary services would have been performed by an independent professional and the reasonable expected cost of such independent services.

3. Service of Copy of Petition for Compensation

In addition to other papers required to be served, copies of any petitions requesting allowance of fees or commissions for

extraordinary services in decedents' estates shall be served on all persons entitled to receive notice of the hearing on the petition (except beneficiaries of specific gifts whose interests are not affected by the compensation requested).

C. Compensation of Conservators, Guardians and Their Legal Counsel

1. Allowance of Fees

Each request for fees in guardianship and conservatorship matters will be considered on its individual merits.

2. Factors in Allowing Compensation

In addition to the factors set forth in California Rules of Court, the Court may consider the following factors, among others, in exercising its discretion in any application for fees for services:

a. Time devoted to the matter categorized by subject matter of services provided. The Court must be provided with a statement of facts containing sufficient information in order to enable it to analyze the reasonableness of the rate and the amount of time devoted to the matter by each person whose time is charged. Time records may be provided to support the statement of facts, but are not required in all cases.

b. The quality and extent of services performed.

c. The responsibility assumed and exercised.

d. In a final account, a reasonable estimate of work and time to complete estate affairs and distribution.

3. Attorney Representing Conservatee or Ward

An attorney representing the conservatee or ward may file a petition for fees at any time after the hearing on the petition for appointment of probate conservator or guardian.

(Eff. 1/1/1997; Rev. 1/1/1999, 7/1/2009)

6.6 BONDS

A. Increasing or Decreasing Bond Amount

The fiduciary may normally petition to increase or decrease the required amount of bond on an ex parte basis, using the procedure for "Ready Matters" described in Local Rule 6.2. Where objections to the amount of bond are expected, the petition should be noticed for hearing on the regular probate calendar.

B. Use of Blocked Accounts

A fiduciary shall evaluate whether holding liquid assets in blocked accounts with financial institutions would be advantageous to the estate and request authorization for such holdings, where appropriate.

C. Waiver of Bond in Conservatorships and Guardianships

The Court generally will not waive bond for conservatorships or guardianships except in the following circumstances:

1. Conservator Spouse of Conservatee

Where the conservator is the spouse of conservatee, all or most of the property of the conservatee is shown to be community property, to the Court's satisfaction, and the community property is to be excluded from estate administration.

2. Conservatee Waiver

In matters where the conservatee gives consent, as a competent person, to waiver of bond.

3. Small Estates

In small estates as defined in the Probate Code. Sonoma County Local Form PR-6 is available for this purpose.

D. Reducing Bond Through Use of Blocked Account

1. Issuance of Letters

Where assets are to be placed in a blocked account, the fiduciary shall file the Receipt and Acknowledgment of Order Restricting Release of Property of the Financial Institution within thirty (30) days of issuance of Letters. Sonoma County Local Form PR-5 is available for this purpose.

Proposed orders pertaining to blocked accounts should contain appropriate language to allow deposits in conformance with the Probate Code and Financial Code § 1586.

2. After Appointment

Bonds may be reduced at any time after appointment by an ex parte petition and order reducing bond, together with the Receipt and Acknowledgment of Order Restricting Release of Property of the Financial Institution showing that assets have been deposited. Such a petition must set forth the total assets of the estate and designate those held in blocked accounts. The reduced bond must satisfy the minimum bond requirements. Such a petition may be presented as a "Ready Matter", as described in Local Rule 6.2.

3. Direct Transmittal to Financial Institution

If the assets to be deposited are in the possession of a financial institution other than the named financial institution, the order should direct the entity in possession to deliver such assets directly to the named financial institution and further direct the financial institution, on receiving such assets, to issue its receipt and agreement to the fiduciary, who shall forthwith file the same with the Court.

4. Withdrawals or Releases from Blocked Accounts

An application for an order authorizing release of assets from a blocked account may be submitted ex parte as a "Ready Matter" as described in Local Rule 6.2. The petition should set forth the approximate value of the assets on hand, the approximate value of all assets in blocked accounts, the amount of the existing bond and the purpose for which the withdrawal is requested.

E. Discharge of Bond and Exoneration of Surety

1. Receipts Must be Filed

Bond shall not be discharged and surety exonerated until all Receipts on Distribution have been filed with the Court.

2. Guardianship Bonds on Termination

The guardian of the estate shall maintain the guardianship bond during the one (1) year period that commences when the ward reaches the age of majority. The Order terminating the guardianship of the estate may include an authorization to retain a reserve for payment of the bond premium for the additional one year period and related fees and costs.

The Order terminating the guardianship of the estate may recite that the bond is discharged and the surety on the bond exonerated on the date that is one (1) year after the ward's 18th birthday, unless suit has been filed within that one (1) year period.

(Eff. 1/1/1997; Rev. 1/1/2003, 1/1/2010)

6.7 SALES OF REAL PROPERTY

A. Overbids in Court Confirmation of Sale

When there is successful overbid in open court on a sale of real property, counsel must complete and the successful bidder must sign an "Increased Bid In Open Court" form and file same. The order will not be signed unless the form is filed. A form for increased bid is available in the Probate Department.

B. No Commission—Special Situations

Except upon showing of good cause, no real estate commission will be allowed or credited to or for the benefit of a purchaser who is a licensed real estate broker or salesperson in any probate sale of real property, directly or indirectly. No real estate commission shall be allowed or credited to or for the benefit of a personal representative or fiduciary in the subject probate proceeding who is a licensed real estate broker or salesperson in any probate sale of real property in the proceeding, directly or indirectly. The petition for confirmation of sale shall state any known claim of the personal representative, fiduciary or purchaser to all or any

part of the proposed real estate commission, directly or indirectly.

C. Disputes Between Agents or Brokers Regarding Compensation

Should a dispute arise between agents or brokers seeking compensation upon the sale of real property under the purview of Section 10161 and/or Sections 10162.5 through 10166 of the Probate Code, there shall be a separate evidentiary hearing to resolve the dispute. Before the hearing the agents or broker, or their respective attorney, shall "meet and confer" (face-to-face) in a reasonable and good faith attempt to informally resolve the dispute, and notify the court of the results at least two court days before the hearing. The sale of real property may be confirmed at the hearing on the sale and need not be delayed by virtue of any dispute for compensation by or between real estate agents or brokers.

D. Contracts With Broker or Agent

Any application for order approving an exclusive listing agreement with a real estate broker or agent shall include a completed copy of the proposed written listing as an attachment.

(Eff. 1/1/1997; Rev. 1/1/1999)

6.8 RULES REGARDING DECEDENT'S ESTATES

A. Duties and Liabilities of Personal Representative

The Sonoma County Superior Court does not require filing of the Confidential Supplement to Duties and Liabilities of Personal Representative, as authorized in Probate Code §8404(a).

B. Content of Orders of Distribution

Every order of distribution, whether or not an accounting has been waived, must set forth specifically the manner in which the estate is to be distributed by showing each distributee's name and a description of the property, including the full legal description and assessor's parcel number for real property, and the amount of cash (as of a date certain) to be distributed. Descriptions must be complete and must not require reference to the petition or to any extrinsic document.

C. Claims of Personal Representative and Attorneys of Record

1. Noticed Hearing

A noticed petition for approval of a creditor's claim of the personal representative or of his attorney of record (with at least 15 days' notice of hearing on all persons whose interest might be affected by approval of the creditor's claim) is required, except as provided below. The creditor's claim shall be complete with approval signed by all personal representatives in the proceeding. The petition shall contain a factual statement relating to the solvency of the estate, including a summary of the nature and amount of assets and all known indebtedness and taxes of the estate, whether absolute or contingent.

2. Ex parte approval

A petition and creditor's claim for any of the following claims that complies with the above rule (except for the 15-day notice requirement) may be presented and considered by the court ex parte.

a. The claim is for reimbursement of funeral and last illness expense, and proof of payment is attached to the claim;

b. The claim, together with all other claims of that personal representative or attorney, except for reimbursement of funeral and last illness expenses, is less than $1,000.00;

c. A written approval signed by all persons whose interest might be affected by the approval is attached to the claim;

d. The personal representative has complied with the provisions of the Independent Administration of Estates Act with respect to the proposed payment of said claim; or

e. A claim for an amount certain and based upon a prior court order, which is attached to the creditor's claim.

(Eff. 1/1/1997; Rev. 1/1/1999, 1/1/2010)

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Stanislaus County
Probate Rules

Effective July 1, 2008

RULE 8
PROBATE, GUARDIANSHIP, CONSERVATORSHIPS AND
ADOPTION RULES

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RULE 8
PROBATE, GUARDIANSHIP, CONSERVATORSHIPS AND ADOPTION RULES

[Rules listed below without text have been superseded by Title 7 of the California Rules of Court. For the Title 7 counterparts to the superseded rules below, see Cal Rules of Ct 7.1-7.1054 in the Appendix to this volume. Rules accompanied by text are specific to Stanislaus County and remain in effect. —*Ed.*]

GENERAL

8.00 Probate Days, Hearings

Probate matters will be heard Monday through Thursday of each week at 8:30 a.m. Conservatorship matters will be heard on Tuesday at 8:30 a.m. The Probate Judge will determine when LPS Conservatorship hearings will be held.

Probate matters will be calendared for hearing by the Probate Unit of the Clerk's Office. All petitions and applications which require a hearing will be assigned a calendar date upon being filed. Any request for early setting must be approved by the Court and will be granted only for good cause.

Telephone calls to the Probate Examiner may be made between the hours of 8:00 a.m. and 5:00 p.m. at (209) 530-3180.

(7/1/09)

8.01 APPLICABILITY OF RULES TO ALL PROCEEDINGS

All rules as hereinafter set forth shall apply to estate proceedings, guardianships, adoptions, conservatorships or trusts, except as otherwise specifically noted.

(1/1/04)

8.02 Time for Filing

In estate and trust cases, all papers necessary to hearing (such as proof of service, posting, orders, etc.) shall be filed with the Clerk at least five (5) Court days before the date of hearing, so that such documents may be placed in the file and checked by the Probate Examiner prior to hearing. The Court recognizes that the proof of publication is not always available five (5) days prior to the hearing date, and will allow such filing up to three (3) Court days prior to the date of hearing. Saturdays, Sundays, and holidays shall not be considered Court days. Other exceptions to this rule will be made at the discretion of the judge, but only for good cause.

A late filing fee of $25 per document will be charged for each document received for filing less than five (5) Court days prior to the hearing. The filing party must deliver copies of all late filed documents and proof of late fee payment to the probate examiner by placing a file-marked copy in the probate examiners' drop box. Drop boxes are located at the security check-in station on both the fourth and sixth floors of the City Towers Building: 801 Tenth Street. File-marked copies must be given to the examiner at least three (3) Court days prior to the hearing. Failure to do so may result in such late filed documents not being reviewed prior to the hearing and may cause the matter to be continued.

(01/01/10)

8.03 FORM OF PAPERS PRESENTED FOR FILING

A. Papers presented for filing with the Clerk shall conform to California Rules of Court 2.100 and 3.1110 except that descriptions of assets may be single spaced within each item.

B. All documents presented for filing are limited to an original plus two (2) copies. Unless otherwise required by Code, the Clerk's Office will conform a maximum of two (2) copies.

(7/1/07)

8.04 CAPTION OF PETITIONS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.05 HEARING DATE REQUIRED ON DOCUMENTS

The date of the hearing should be placed immediately below the case number on the first page of every document filed which relates to a matter already set for hearing. Failure to include the hearing date on documents filed less than five (5) court days prior to hearing could delay matching the document with the court file and may result in a continuance.

(7/1/06)

8.06 SIGNING AND VERIFICATION OF PLEADINGS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.07 AMENDMENTS TO AND AMENDED PLEADINGS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.08 GENERAL INSTRUCTIONS TO FIDUCIARIES FORM REQUIRED FOR APPOINTMENT [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

NOTICES

8.09 PREPARATION OF NOTICES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.10 NOTICE FOR SPECIAL LETTERS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.11 PROBATE MATTERS ONCE NOTICED CANNOT BE ADVANCED

When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set.

(7/1/99)

8.12 NOTICE OF PETITION TO ADMINISTER ESTATE

Notice of petition to administer estate must be published pursuant to Prob C §8120. Defects in publication will cause the matter to be continued and will require that the notice be republished.

(7/1/06)

8.13 NOTICE: BY WHOM GIVEN [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.14 NOTICE BY POSTING [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.15 HEIRS WITHOUT KNOWN ADDRESSES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.16 NOTICE TO FOREIGN CONSULS

Notice must be given to a recognized diplomatic or consular official as required under Prob. Code §8113. If a devisee or heir is an

American citizen residing in a foreign country, that fact should be alleged and notice to the diplomatic or consular official is not required.

Whether a country has recognized diplomatic or consular representation in the United States may be ascertained from the United States Department of State.

(7/1/99)

8.17 NOTICE TO DIRECTOR OF HEALTH SERVICES

If a deceased person has received or may have received health care through the Department of Health Services, or if the decedent was the surviving spouse of a person who received that health care, notice of the decedent's death must be given to the Director of Health Services pursuant to Prob. Code §215. A copy of the proof of service or a declaration that notice is not required must be filed in all decedent's estate matters.

(7/1/99)

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

8.18 DECLINATION TO SERVE

If the person named in the decedent's will as executor thereof declines to act as such, his written and signed declination to act must be filed with the Court unless evidence is produced that he is incompetent or refuses to act.

(7/1/99)

8.19 IF WILL IS IMPEACHED, BOTH WITNESSES MUST BE PRODUCED [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.20 PETITION FOR TEMPORARY OR SPECIAL LETTERS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.21 MULTIPLE REPRESENTATIVES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.22 CONTINUANCE TO PERMIT FILING OF WILL CONTEST [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.23 Proving Wills—Declaration or Self Proving

A. The Court prefers that both formal witnessed wills and holographic wills be proven by declaration rather than by testimony. The declaration shall have a photographic copy of the will or codicil attached. (Prob. Code § 8220)

B. Proof as to the admissibility of each testamentary document must be submitted except that, in the event there is a codicil which expressly republishes the will, proof of the execution of the codicil may be deemed sufficient.

C. To avoid a continuance of the hearing, an affidavit or declaration proving the will should be filed with the Clerk at least five (5) Court days before the time set for the hearing of the petition for probate of will.

D. In uncontested proceedings self-proving wills need no additional proof unless requested by the Court. A will may be considered self proving if the attestation clause contains the following:

1. The testator requested the witnesses to sign as witnesses to the signature.

2. The witnesses and the testator signed in the presence of each other.

3. The testator is of sound mind and is not acting under duress, menace, fraud, or undue influence of any person whomsoever.

4. The testator is over the age of 18 years.

5. The witnesses signed under penalty of perjury.

(1/1/10)

8.24 COPY OF WILL TO BE ATTACHED TO PETITION FOR PROBATE

A. If the will is holographic or handwritten, in addition to a photocopy, a typewritten copy of the will must be attached to the petition, to the original will and to the proof of holographic instrument.

B. The Court encourages reducing the copy of any original will on legal sized paper (14 inches) to standard size (11 inches).

(1/1/04)

8.25 EXECUTOR IDENTIFIED IN WILL

In the event that the will exceeds 5 pages in length, a statement shall be included in the petition for probate indicating the page and line where the nomination of the Executor and waiver of bond, if any, are to be found.

(7/1/99)

8.26 Naming Heirs and Beneficiaries in Petition

All persons and entities mentioned in decedent's Will and Codicils must be listed in item 8 of the petition for probate regardless of any lack of devise or bequest to said person or entity. If item 8 of the petition for probate includes a spouse or any other person who is deceased as of the date of the petition, the petition must include the person's date of death. If the person to be listed in item 8 died after the decedent, the name and address of the personal representative or other successor in interest of such deceased person's estate must be listed.

(1/1/10)

8.27 DESIGNATIONS WHETHER SEPARATE OR COMMUNITY PROPERTY [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.28 TRUSTEE AND GUARDIAN TO BE NAMED [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.29 HEIRS OF PREDECEASED SPOUSE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.30 CONTINGENT HEIRS, DEVISEES, AND LEGATEES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.31 COMPLETE ADDRESS IN PETITION [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.32 LOST OR DESTROYED WILL [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.33 BONDING OF PERSONAL REPRESENTATIVES

In the event a minimum bond is imposed by the Court, the minimum bond amount shall be $20,000.

(1/1/06)

MOTIONS AND PETITIONS

8.34 SIGNATURES AND VERIFICATIONS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.35 PETITIONS FOR EX PARTE ORDERS

All ex parte petitions must be verified and accompanied by a separate order complete in itself. An order is insufficient if it merely provides that the petition has been granted as set forth in the petition.

If there is an urgent need for the order, attach a note to the first page of the documents that states RUSH.

Since no testimony is taken in connection with ex parte petitions, the petition must contain sufficient evidentiary facts to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient. A foundation should be set forth establishing the affiant's personal knowledge.

If because of the apparent emergency nature of the application, the Court elects to consider the matter ex parte, but the need for an opportunity to be heard is apparent, the Court may require moving counsel to give at least 12 hours informal notice of the nature of the application to counsel for other interested parties, or in the absence thereof, to the other interested parties, themselves, together with the proposed time and place of the hearing. The time may be shortened by agreement of the parties and the Court. Before the hearing is held, moving counsel shall submit a declaration to the Court setting forth facts, if any, relating to the efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice.

(7/1/99)

8.36 WAIVER OF SPECIAL NOTICE REQUIRED FOR EX PARTE ORDER [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.37 PROPERTY SPECIFICALLY BEQUEATHED [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.38 PETITION FOR INSTRUCTIONS—LIMITATIONS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.39 PETITIONS FOR DETERMINATION OF PERSONS ENTITLED TO ESTATE DISTRIBUTION [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.40 PETITIONS FOR PERMISSION TO CONTINUE OPERATION OF A DECEDENT'S BUSINESS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

ORDERS

8.41 A. Probate Orders

Attorneys or self-represented litigants are to prepare all orders. If counsel wish to obtain orders on matters that are approved on the day of hearing, those orders must be delivered to the Probate Unit of the Clerk's Office at least five (5) Court days prior to the hearing. The orders should be submitted separately and not attached to any other document or pleading. All orders or decrees in probate matters must be complete in themselves. They shall set forth all matters actually passed on by the Court, the date of hearing, the relief granted, the names of persons, and descriptions of property or amounts of money affected, with the same particularity required of judgments in civil matters.

All orders must be prepared so that the general effect may be determined without reference to the petition on which it is based. No order shall merely recite that the petition as presented is granted.

The signature line must always be at the end of the order and not followed by any attachment. It should never be on a page by itself.

No additions or deletions are to be made to court orders after they have been signed unless approved by the Court.

All orders except for conservatorship and guardianship cases signed in open Court or in ex parte hearings and presented to attorneys for filing must be taken to the Clerk's Office for filing immediately after the conclusion of the court proceeding in which

the order is signed. Only attorneys are allowed to present original probate court orders for filing. Surrendering an original court order to anyone other than court personnel or a member of the bar association, or failure to present a signed order to the Clerk's Office for filing immediately after the proceeding in which the order is signed, shall render that order null and void.

(7/1/08)

B. Inventory Review Hearing

At the time an order is made appointing a personal representative of an estate, a review hearing will be scheduled six (6) months from the date of appointment. The purpose of this hearing is to monitor the filing of the Inventory and Appraisal. All inventories are due four months from the date of issuance of Letters. Prob C §8800(c).

(1/1/08)

FAMILY ALLOWANCE

8.42 LATE REQUESTS

Requests for a family allowance should be made in a timely fashion. The Court discourages requests for retroactive payment of family allowance beyond (two) 2 months.

If the application is made more than 6 months after the administrator or executor has qualified, it must be noticed and placed on the calendar.

(7/1/99)

8.43 DURATION

The duration of an order for family allowance is limited to six (6) months if no inventory and appraisement has been filed and is limited to one year if an inventory and appraisement has been filed. For good cause shown in writing, such orders may be renewed. The order shall state the commencement date and the period payments are to be made; i.e., "commencing with date of death and continuing until the inventory is filed, but not to exceed six months."

(7/1/99)

8.44 CONTENTS OF PETITION

The application for an allowance shall include at least the following data:

A. The applicant's income from sources outside the estate,

B. An itemized list of the applicant's assets, and a statement of the appropriate value of each,

C. A general statement of the assets and of the liabilities of the estate,

D. The date of the application,

E. The date of the decedent's death,

F. A general statement of other applications (if any) on file for allowances.

(7/1/99)

8.45 EX PARTE ORDERS—WHEN PERMITTED

If the petition is made before an inventory has been filed, it may be presented ex parte to the Court unless it is a petition for a second or additional allowance, in which event it shall be noticed and placed on the calendar.

The petition will not be granted ex parte under either of the following circumstances:

A. If the application is made more than six months after the administrator or executor has qualified, or

B. If the petitioner is someone other than the personal representative and the petition is not accompanied by either of the following documents signed by the personal representative: (1) Consent to the allowance or (2) Waiver of Notice.

(7/1/99)

8.46 WHEN COURT APPROVAL NOT REQUIRED

If the estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a reasonable family allowance in accordance with Prob. Code §10535.

(7/1/99)

CREDITORS CLAIMS

8.47 FORM OF CLAIM [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.48 ALLOWANCE OR REJECTION OF CLAIMS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.49 CLAIMS OF REPRESENTATIVES AND THEIR ATTORNEYS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.50 APPROVAL OF FUNERAL CLAIMS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.51 LISTING OF CREDITOR'S CLAIMS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.52 PAYMENT OF DEBTS WITHOUT CLAIMS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

SALES OF PROPERTY

8.53 SALE OR ENCUMBRANCE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

No specifically devised or bequeathed real property shall be encumbered or offered for sale unless first approved by the Court after not less than ten days' notice to the specific devisee or legatee, or unless the consent of the devisee or legatee is on file.

(7/1/99)

8.54 APPRAISAL OF REAL PROPERTY WITHIN ONE YEAR

Real property must have been appraised within one year of the time of sale. Since the first appraisement reflects the value at the time of death of the decedent, if the date of death is more than one year prior to the date of sale, a reappraisal for sale is required.

(7/1/99)

8.55 Published Notice of Sale of Real Property

Unless a personal representative has full authority under the Independent Administration of Estates Act or a will exists which specifically grants an executor the authority to sell without notice (Prob. Code § 10303), a publication of notice of sale of real property is required. A power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the sale is authorized by the will. (07/01/09)

If publication of the notice of sale is performed, the following requirements shall be met:

A. Any sale must be in substantial accordance with the terms and conditions set forth in the notice.

B. The published notice of sale of real property constitutes a solicitation for offers. A petition must not be filed and an offer must not be accepted prior to the date of sale specified in the published notice. If this situation occurs, the sale will be denied.

C. When the personal representative accepts an offer and files a petition for confirmation of sale, there cannot be a material variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the Court cannot confirm a sale on terms other than cash.

D. In conservatorships and guardianships, absent an order under Prob. Code § 2591(d) granting the conservator or guardian the independent power to sell real property of the estate, publication shall be required.

(07/01/09)

8.56 MAILED NOTICE OF SALE

For all sales, notice of hearing and a copy of the petition must also be served by mail at least fifteen (15) days before the hearing on each of the proposed purchasers (Prob. Code §10308(c)).

(7/1/99)

8.57 DESCRIPTION OF PROPERTY

All legal notices for the sale of real property and the petition for confirmation of sale shall contain, in addition to the legal description, the common street address of the property. If there is no common street address, some indication of the location of the property shall be included.

(7/1/99)

8.58 BOND ON SALE OF REAL PROPERTY

If a bond or additional bond is required in an order confirming sale of real estate, the Court must not file the order until the additional bond is filed.

(1/1/02)

8.59 BROKER'S COMMISSION ON SALE OF REAL PROPERTY

Upon the confirmation of the sale of improved real property, a broker's commission of a maximum 6 percent (6%) of the gross sales price will be allowed. For the sale of unimproved real property, the maximum allowable commission will be ten percent (10%).

(7/1/99)

8.60 DEPOSIT

Bids for the purchase of real property must be accompanied by a minimum deposit of ten percent (10%) of the purchase price unless the buyer's committed loan proceeds exceed ninety percent (90%) of the purchase price. In addition, overbids shall be accompanied by a cashier's check, equal to ten percent (10%) of the amount of the first overbid. On a showing of good cause, the Court may consider other terms.

(7/1/99)

8.61 PERSONAL PROPERTY—APPRAISAL BEFORE SALE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.62 PRESENCE OF ATTORNEY FOR ESTATE AT CONFIRMATION OF SALE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.63 CONDITIONAL SALES OF REAL PROPERTY

The Court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail the Court may approve such a sale.

(7/1/99)

8.64 SALES OF REAL PROPERTY WHEN BUYER ASSUMES ENCUMBRANCE

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement and any contingent liability.

(7/1/99)

ACCOUNTS AND REPORTS

8.65 Summary, Schedules, Supporting Information, Summary of Account Form

A. All accountings shall contain a Summary of Account (Prob. Code §1061). The Summary of Account shall contain and be in the format as set forth below. It shall be the first page of the account and should not be in the body of the report.

SUMMARY OF ACCOUNT

This account covers the period from _____ to _____ inclusive.

CHARGES	
Property on hand at beginning of account period (or inventories)	$_____
Additional property received (or supplemental inventories)	$_____
Receipts (Schedule _____)	$_____
Gains on sale or other disposition (Schedule_____)	$_____
Net income from trade or business (Schedule _____)	$_____
TOTAL	$_____
CHARGES	
CREDITS	
Disbursements (Schedule _____)	$_____
Losses on sale or other disposition (Schedule _____)	$_____
Net loss from trade or business (Schedule _____)	$_____
Distributions (Schedule _____)	$_____
Property on hand at close of account period (Schedule _____)	$_____
TOTAL CREDITS	$_____

Total charges must equal total credits (Prob. Code § 1061(10)(c)).

All accounts filed in decedent estates, guardianship, conservatorship and trust accounts, shall comply with Prob. Code § 1060 et seq., Prob. Code §2620 et seq., and Prob. Code § 10900 et seq.

For additional requirements in conservatorship and guardianship matters refer to Local Rules 8.124 and 8.125.

For additional requirements in decedents' estates and in trust matters, refer to Local Rule 8.83.

B. The following schedules are required to be attached to the accounting (Prob. Code §1062):

1. Receipts showing the nature and purpose of each item, the source of the receipt, and the date thereof;

2. Disbursements, including the nature or purpose of each item, the name of the payee, and the date thereof;

3. Net income or loss from a trade or business, which shall be sufficient if it provides the information disclosed on Schedules C or F of the federal income tax return;

4. Calculation of gains or losses on sale or other disposition of assets;

5. Distributions of cash or property to beneficiaries, ward or conservatee, showing the date and amount of each, with the distribution of property shown at its carry value;

6. Itemized list of property on hand, describing each item at its carry value.

Reference should be made to Prob. Code §1063 for additional schedules required to be attached to all accountings.

C. Petition for approval of Account/Contents Filing: Additional information to be provided either in the body of the petition or in separate schedules or exhibits with a reference to the schedules or exhibits in the body of the petition (Prob. Code § 1064).

1. A description of all:

a. sales

b. purchases

c. changes in the form of assets

d. other transaction occurring during the period of the account that are not otherwise readily understandable from the schedule.

2. An explanation of any unusual items appearing in the account.

3. Statement of all compensation paid to the fiduciary or to the attorney for the fiduciary other than pursuant to a prior Court order.

4. A statement disclosing any relationship between the fiduciary or the attorneys for the fiduciary and any agent hired by the fiduciary during the account period.

5. (a) Per Probate Code §1064 (a)(5); 1064(b)(c): An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

(b) The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the code, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.

(c) For purpose of this section, "family" means a relationship created by blood or marriage. For purposes of this section, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.

(1/1/08)

8.66 TRUST AND SPECIFICALLY BEQUEATHED PROPERTY—ALLOCATION OF RECEIPTS AND DISBURSEMENTS

(Refer to Prob. Code §1063.) (7/1/99)

8.67 DEBTS PAID WITHOUT VERIFIED CLAIMS

Payment of debts of the decedent arising upon contract or funeral expenses of the decedent must be supported by verified claims presented or filed within the statutory period and allowed and approved. This rule also applies to debts and funeral expenses paid by the personal representative from his own funds, in which case a claim by the representative for reimbursement must be presented and filed in the usual way, supported by a receipt or other sufficient evidence of payment.

Although a verified claim has not been filed, the Court may, under Prob. Code §§9154 and 11005, approve the payment of a debt if the accounting shows that such debt was paid during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the Court and must be justified by allegations in a verified petition or by testimony in open Court as to the factors referred to in Prob. Code §9154. [See Estate of Erwin, 117 CA2d 203 (1953).]

(7/1/99)

8.68 Withholding Funds from Distribution

In the event the Petition for Final Distribution requests the withholding of funds for tax purposes or closing expenses in excess of $1,500, the Decree based upon that Petition shall provide that an accounting be filed with the Court within six (6) months of the date of the hearing setting forth a complete accounting of the monies withheld. The Court, in its discretion, may require a noticed hearing of the accounting on retains.

(1/1/10)

8.69 Petition for Distribution Without an Account—Waivers of Account

Although a preliminary or final distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent. The Court will not permit distribution in an insolvent estate without an account.

The effect of the waiver is to make it unnecessary to list the detail of receipts and disbursements. The calculation of statutory commissions and/or attorney's fees must include losses on sales and include gains on sales. All other matters contained in Prob. Code §§1062, 1063 and 10900 must be presented in the report. Creditors' claims, property on hand to be distributed, computation of attorney's fees and executor's fees, and costs of administration, must be listed in the report. (Also refer to Local Rule 8.83).

A waiver of account or an acknowledgment that an interest has been satisfied on final distribution must comply with Prob. Code § 10954. A notarized acknowledgement of the signature of the heir or beneficiary shall be included on each waiver of account.

(7/1/08)

8.70 SIGNING OF ACCOUNT

Any account and report required to be filed by a fiduciary must be personally signed by the fiduciary. When more than one fiduciary is serving, the account and report must be signed by each of them, or the absence of one signature satisfactorily explained.

(7/1/99)

8.71 VOUCHERS

Vouchers supporting accounts are not to be filed with the Clerk unless the Court orders them filed. (Prob. Code §10900)

(7/1/99)

8.72 DAMAGES FOR WRONGFUL DEATH, PHYSICAL INJURY AND PROPERTY DAMAGE

Recovery of damages for wrongful death, as distinguished from physical injury and property damage may be held by the fiduciary and are not part of the estate. (CCP §377.60) If an executor or administrator collects damages and costs arising out of the physical injury of decedent, or property damage as distinguished from wrongful death, he shall hold such money in his representative capacity as property of the estate. (CCP §377.20)

(7/1/99)

FEES AND COSTS

8.73 GENERAL INFORMATION ON AND COMPUTATION OF COMPENSATION [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.74 COMPENSATION WHEN ACCOUNTING WAIVED [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.75 ALLOWANCES ON ACCOUNT OF STATUTORY COMPENSATION [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.76 ATTORNEY INCURRED COSTS REIMBURSED OR INCLUDED IN FEE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.77 PROPERTY IN LIEU OF FEE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.78 NOTICE TO PRIOR REPRESENTATIVE OR ATTORNEY [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.79 COMPENSATION FOR EXTRAORDINARY SERVICES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.80 COMPENSATION FOR EXTRAORDINARY SERVICES BY A PARALEGAL [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.81 REIMBURSEMENT FOR COSTS ADVANCED [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.82 Petition or Status Report Required Filing Time

Within one (1) year from the date of issuance of letters in estates not required to file a federal estate tax return and within eighteen (18) months from the date of issuance of letters in estates where such return is required, the executor or administrator must either petition for final distribution of the estate or file a verified report of status of administration. If such report is filed, it shall show the condition of the estate and the reasons why the estate cannot be distributed and closed. Said report shall comply with Prob. Code § 12200.

A status review hearing will be set six months from the date of the successful inventory review hearing. The purpose of this status review hearing is to monitor the case to verify that either a petition for final distribution or a status report has been filed.

(1/1/08)

8.83 Report of Administration

The following shall be included in a report of administration, whether filing an account or a waiver of account:

A. Whether notice has been given to reasonably ascertainable creditors. Prob. Code § 10900.

B. Schedule of Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

C. An allegation that all taxes due or owing by the estate have been paid or arrangements made.

D. An allegation that the requirements of the Revenue and Taxation Code §480 have been met. Prob. Code §8800(d)

E. An allegation that a notice of death has been provided to the Department of Health Services as required by Prob. Code §§215 and 9202, or that no such notice if required.

F. Petitions for distribution must contain allegations regarding whether or not, the general personal representative or estate attorney knows or has reason to believe that an heir is confined in a prison or facility order the jurisdiction of the Departments or Corrections or Department or Youth Authority or confined in any county or city jail, road camp, industrial farm, or other correctional facility. If distribution will be made to such person, the petition for distribution must contain an allegation that no such notice is required or that a notice of death has been provided to California Victim Compensation and Government Claims Board as required by Prob. Code §9202, and whether or not the Director of the California Victim Compensation and Government Claims Board has demanded collection of any outstanding restitution fines or orders. (1/1/09)

G. An allegation that a notice of administration has been provided to Franchise Tax Board as required by Prob. Code §§1215 and 9202, or that no such notice is required.

H. An allegation as to the character of the property, whether separate or community.

I. An allegation that all cash in the estate has been invested in interest bearing accounts, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

J. A computation of the attorney fees and representative commissions requested, including the fee base, including gains or losses on sales. If the fee or commission is being waived, the petition shall so state.

K. An itemization of all costs of administration, whether or not reimbursement is requested.

L. For decedent's estate proceedings commenced during the period August 18, 2003, through January 1, 2008, the information required by subdivisions (a) and (b) of California Rule of Court 7.552, if a refund of graduated filing fees is sought.

M. If the estate is inventoried at more than $1,000,000 and more than $250,000 is distributable to a non resident of California, a state income tax certificate issued by the Franchise Tax Board must be filed. Revenue & Taxation Code §19513.

N. The caption of a petition must be all-inclusive as to the relief sought. This includes, but is not limited to, a request for final distribution, distribution to a trust, request for statutory or extraordinary fees or commissions.

O. A full and complete description of all assets on hand, including the legal description, assessor's parcel number, carry value and current fair market value. There shall also be a schedule setting forth the proposed distribution.

P. In any petition for distribution, all independent acts taken without prior Court approval shall be set forth. If the act required giving notice of proposed action, the notice with proof of service attached shall be filed with the clerk.

(7/1/08)

8.84 DISTRIBUTION TO MINORS

The Court will require the following documents to be on file before making an order for distribution:

A. If distribution is to be made to the guardian of a minor, a certified copy of the letters of guardianship;

B. If a minor's estate is to be deposited in Blocked account, MC-355, "Order to Deposit Money" shall be presented at the hearing for distribution.

C. If distribution is to a custodian under the California Uniform Transfers to Minors Act (Prob. Code §3900 et seq.), the written notice of acceptance of the office by the custodian as described on Prob. Code §6347(b).

D. If distribution is to be made to a parent for the benefit of a minor under Prob. Code §3401, a copy of the written assurance, pursuant to Prob. Code §3300 by such parent.

(1/1/04)

8.85 DISTRIBUTION TO A TRUST (TESTAMENTARY OR IRREVOCABLE) [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.86 DISTRIBUTION TO AN ASSIGNEE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.86.1 Distribution Care-of Attorney

The Court will not order distribution of an heir's or devisee's interest in the estate care of his or her attorney, unless the written consent of the heir or devisee is filed with the Court.

(1/1/09)

8.87 Distribution Pursuant to Agreement

If the distributees seek distribution in a manner other than that provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement (signed by all involved distributees with signatures acknowledged before a notary public) must be filed. If an Agreement for Distribution contains an assignment of interest from one party to another, the agreement must contain specific wording as to the assignment or a separate form of Assignment of Interest which has been signed and acknowledged before a Notary Public must be filed in the proceeding.

Note: If any such distributee is a minor or is under disability, the agreement must be signed by the minor's legal guardian. Either earlier Court approval of the agreement in the guardianship proceeding must be proved in the probate proceeding or a petition for approval of the agreement in both the guardianship proceeding and the probate proceeding must be brought on for hearing at the same time.

(7/1/08)

8.88 DISCLAIMERS

A copy of any disclaimer must be on file prior to the hearing of any petition for distribution of any affected asset.

(7/1/99)

8.89 NOTICE TO TRUST BENEFICIARIES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.90 NOTICES IN ACCOUNTS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.91 ORDERS DISPENSING WITH ACCOUNTS

If a guardianship or conservatorship estate meets the requirements of Prob. Code §2628, a petition to waive accounts should be submitted. The petition may be submitted ex parte. A suggested form is available from the Superior Court Clerk's Office or the Court Investigator's Office.

(7/1/99)

8.92 Discharge Review Hearing

A. At the time an order for final distribution is made, a review hearing will be scheduled for the purpose of monitoring the filing of receipts on distribution and, if appropriate, the filing of a request for discharge of the personal representative.

B. In matters where there are retains of $500 or less, the discharge review hearings will be scheduled two months from the date of the order of final distribution.

C. In matters where there are retains in excess of $500, the discharge review hearing will be scheduled nine months from the date of the order of final distribution to allow time for filing the accounting required by Local Rule 8.68

(7/1/09)

JOINT TENANCIES AND LIFE ESTATES

8.93 PROCEEDINGS IN NAME OF DECEDENT

A petition to establish the fact of death must be filed in the name of the deceased person whose interest has been terminated. The petition must be verified.

(7/1/99)

8.94 SEPARATE PETITION PREFERRED

Probate Code §200, et seq. authorizes a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. However, attorneys are encouraged to file a separate petition under the same number in order to avoid administrative difficulties. No such separate petition may be filed after the filing of a petition for final distribution; and, if a petition to establish fact of death is then filed, it should be in a new proceeding under a new number.

(7/1/99)

8.95 OBTAINING ORDER

The order can be obtained ex parte if the petition is accompanied by:

1. An affidavit or declaration by petitioner that petitioner has no reason to believe that there is any opposition to, or contest of the petition.

2. A death certificate.

3. A copy of the deed or other document that created the joint tenancy, and

4. The proposed order.

Filings not accompanied by these documents must be set for hearing in accordance with the appropriate Probate Code section.

If a check for the certification fee and a stamped self-addressed envelope are furnished, the Clerk will obtain the Judge's signature, file the order, certify the copy, and mail it to the petitioner's attorney.

(7/1/99)

8.96 FEES

There is no provision in the code for the determination by the Probate Court of attorneys' fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character shall be included in any petition for fees in an estate matter, and if so included, will be disallowed.

(7/1/99)

PETITIONS SETTING ASIDE ESTATES AND
SPOUSAL PROPERTY PETITIONS

8.97 PETITION TO SET ASIDE UNDER PROBATE CODE §6600-§6613 OR FOR LETTERS

A petition to set aside under Prob. Code §6600, et seq. may be filed as a separate petition or may be worded in the alternative, i.e., the petition may pray for admission of the will and for letters testamentary or for letters of administration if the petition to set aside should be denied. If a petition to set aside is filed separately and concurrently with a petition for admission of the will or for letters of administration, the petitions should be set for hearing at the same time.

(7/1/99)

8.98 SPOUSAL PROPERTY PETITION—PROBATE CODE §13650

A. The petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (½) interest in such property should be listed on one schedule and the surviving spouse's one-half (½) interest in the same property listed on another schedule.

B. In addition to the allegations required by law, a petition to determine and/or confirm community property should contain as many of the following allegations as are relevant:

1. Date and place of marriage to surviving spouse.

2. Whether or not decedent owned any real or personal property on date of marriage, and if so, descriptions and appropriate values.

3. Decedent's net worth at time of marriage.

4. Whether decedent received any property after date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship, and if so, descriptions, approximate value and date of receipts.

5. Whether any property so received by decedent under (d) above is still a part of this estate, and if so, identification of such property.

6. Date decedent first came to California after marriage.

7. Any additional facts upon which claim of community property is based. If the claim of community property is based on any document, a photocopy thereof (preferably a photocopy showing signatures) should be attached to the petition.

(7/1/99)

8.99 PETITION TO SUCCEED TO REAL AND PERSONAL PROPERTY—PROBATE CODE SEC. 13150

If the distribution requested in the petition is pursuant to the decedent's will, a proof of subscribing witness shall be filed in the proceedings.

(7/1/99)

INDEPENDENT ADMINISTRATION

8.100 NOTICE AND PUBLICATION REQUIREMENTS

A. If the request for authority to administer the estate under the Independent Administration of Estates Act (IAEA) is made by separate petition, notice must be given for the period and in the manner applicable to the petition for appointment. (Prob. Code §10451).

B. If notice of proposed action is required prior to performance of an act under IAEA authority, the original of the Notice of Proposed Action, with attached affidavit of mailing, shall be filed with the Court.

(7/1/99)

TRUSTS

8.101 TRUSTEES' ACCOUNTS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.102 BENEFICIARIES TO BE IDENTIFIED—NOTICE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.103 TRUSTEES' FEES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.104 REMOVAL OF TRUST FROM COURT JURISDICTION [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.105 Trustees' Report [SUPERSEDED]

[See California Rules of Court 7.1-7.1060]

GUARDIANSHIPS

8.106 Consolidation of Adoption and Guardianship Proceedings

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.107 Appointment of Temporary Guardian

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.108 Reconsideration of Temporary Guardianships

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.109 Appointment of General Guardian

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.110 Notice of Hearing

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.111 Investigation Fees re: Guardian

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.112 Guardianship of the Person—Documents to Court Investigator

See Family Law Rules 7.74-7.81 for rules pertaining to guardianships.

(1/1/08)

8.113 Mediation of Guardianship

(1/1/08)

CONSERVATORSHIPS

8.114 Appointment of Temporary Conservator

A. If a Temporary Conservatorship is needed, a Petition for Appointment of a Temporary Conservator must be filed concurrently with, or subsequent to, the filing of a petition for appointment of a general conservator. Notice of the ex parte application is required to be given pursuant to Prob. Code § 2250(c).

B. Prior to the date set for the ex parte hearing, all petitions and documents pertinent to the temporary application shall be reviewed by the Court Investigator. The petition shall state the facts giving rise to the need for the conservatorship.

Temporary petitions will be reviewed by the Court Investigators. A petition will go to the judge only if it is procedurally correct and if the required notice has been given or dispensed with.

Unless some degree of urgency is present, the Court ordinarily will not entertain an ex parte application for appointment of temporary conservator.

If no opposition is presented and the matter appears appropriate, the Court may grant the petition.

(7/1/00)

8.115 Appointment of General Conservator

Petitions for appointment of general conservators are set on calendar for hearing at 8:30 a.m. Tuesday. A copy of all filings along with the Conservatorship Questionnaire will be kept at the time of filing by the Clerk's Office for forwarding to the Court Investigator's Office.

A. Ex-Parte hearings before the Judge are set at 1:20 p.m., Monday through Thursday. Proof of notice to the Court Investigator's Office by fax at (209) 525-5740 must be provided to the Court. Said faxed notice to the Court Investigator's Office must be received by the Court Investigator's Office no later than 10:00 a.m. on the morning the date the hearing is sought.

B. Subpoenas for long cause matters set out 30 days or more must be personally served on the applicable Court Investigator 30 days prior to the hearing along with the required $150.00 payable to the Stanislaus County Superior Court. The Court finds that 30 days is a reasonable period of time as required by statute.

Petitions for appointment of a conservator shall be set for hearing at least forty-five (45) days after the date of filing. Although only fifteen (15) days notice is required by the Probate Code, the additional time is necessary to insure that the proceeding is not delayed because the Court Investigator did not have sufficient time to complete the investigation.

(1/1/08)

8.116 INVESTIGATION FEES RE: CONSERVATOR

When a petition requests appointment of a conservator of the person or estate, a conservatorship investigation fee must be paid to the clerk in addition to the regular filing fee. Counsel and parties are advised to contact the Clerk's Office for the amount of the current investigation fee. If it appears that the payment of the fee would cause a hardship, the fee may be waived upon application

to the Court.

(7/1/99)

8.117 CONSERVATOR'S HANDBOOK AND ORIENTATION PROGRAM

Each proposed conservator (including proposed temporary conservators) must purchase the Conservator's Handbook from the Probate Division of the Clerk's Office before the Court will consider the person's petition for appointment.

Each proposed conservator (other than a proposed temporary conservator) should attend an orientation program provided by the Court before the hearing date on the petition for appointment. The Conservator's Handbook must be purchased and taken to the orientation program. For an appointment to attend the orientation, contact the Court Investigator's Office at (209) 525-4433.

The Public Guardian, corporate fiduciaries, banks and other entities authorized to conduct the business of a trust company are exempt from these requirements. All other proposed conservators, including private professional conservators, must meet these requirements once.

(7/1/99)

8.118 PROCEEDINGS FOR A PROPOSED TRANSACTION PROBATE CODE SEC. 3100 ET SEQ.

Before a petition for an order authorizing a proposed transaction can be granted, the Court must make several findings, including those listed in Probate Code § 3144, and specifically that one spouse lacks the legal capacity to complete the transaction and that the other spouse either has legal capacity or has a conservator. The petition and order shall include a request for those findings.

In order for the Court to make a finding that a spouse lacks legal capacity, there must be presented with Petition a declaration from a doctor or medical practitioner that complies with Probate Code § 81, 811 and 812. The declaration must specifically state that the person lacks the capacity to make a decision or perform the specific act required to complete the transaction.

(1/1/02)

8.119 SUBSTITUTED JUDGMENT—SPECIAL NEEDS TRUST PROBATE CODE SEC. 2580

Any party filing a petition for substituted judgment must fully inform the Court of all relevant circumstances. The petitioning party must use due diligence to inform the Court of everything a reasonable person in the conservatee's position would have wanted to know before deciding whether or not a proposed action should be taken.

The Court may appoint counsel for the conservatee. If the matter is contested, the Court may also order the Court Investigator to investigate and report to the Court.

If the Court grants a petition for the exercise of substituted judgment, the order after hearing shall contain the findings required by Probate Code Section 2582.

If a trust is established pursuant to the substituted judgment statutes for a conservatee, the Court will require annual accountings of all trust assets and the trust shall remain under the jurisdiction of the probate Court.

(7/1/99)

GUARDIANSHIPS AND CONSERVATORSHIPS

8.120 INDEPENDENT POWERS

The Court may, on the petition of the conservator or guardian, either at the time of appointment or later, grant additional independent powers to the conservator or guardian as authorized by Probate Code §§2590 and 2591. Additional independent powers are not lightly granted. The petition must state for each Probate Code §2591 power requested, the facts and reasons which justify the independent exercise of the power. Additionally, if the power to sell or encumber a conservatee's present or former personal residence is requested, the information required under Probate Code §2540(b) must be included in the petition by way of a declaration the first time the conservator seeks authority to encumber, list or sell the conservatee's present or former personal residence. The Court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of conservatorship.

Where the power is granted to sell real property (thereby eliminating the need to publish notice of sale), the Court requires the sale to be confirmed by the Court.

(7/1/99)

8.121 BONDS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.122 WAIVER OF BOND [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.123 INVENTORY AND APPRAISEMENT

An inventory and appraisement of the estate, as of the day of appointment, shall be filed by the guardian/conservator with the Clerk of the Court within ninety (90) days after the appointment unless the Court has granted a petition for further time for filing (Prob. Code § 2610).

(1/1/04)

8.124 Accounts—When Due [SUPERSEDED]

[See California Rules of Court 7.1-7.1060]

8.125 Accounts—Matter to Be Included

All accounts must include the information required by Prob. Code §§2620 and 1060 et. seq.

Market values for assets without a ready market shown on the schedule of estimated market values required pursuant to Prob. Code § 1063(a) should not reflect changes from carry value unless the method of evaluation is fully explained. If there is no reasonable method of valuation that complies with Prob. Code § 1063(a), but there has been a significant event that affects the value of the asset, such as a flood or other damage, the event should be disclosed in footnote to the schedule.

Where there are multiple wards joined in a single guardianship proceeding an account shall reflect a separate accounting for each of the respective wards.

A copy of the bank statements which include the ending date of the accounting period for each bank account, mutual fund account, brokerage account or other investment account, shall be attached to every accounting filed.

Final accounts for deceased wards or conservatees shall include separate accounts for transactions before the date of death and transactions after the date of death in accordance with Prob. Code § 2620. If the distribution upon termination of guardianship or conservatorship of the estate is to be made to a fiduciary appointed in another Court action, such as a probate estate, a certified copy of the Letters of Appointment shall be filed with the account. If distribution is to be made pursuant to Prob. Code § 13100, the affidavit or declaration required therein shall be filed with the report.

(1/1/08)

8.126 Report by Court Investigator

The Court Investigator shall file a report with the Court in respect to each accounting filed unless the conservatee is deceased. In addition to those requirements set forth in Prob. Code §§ 1826, 1951, 1894, 2684 and 1513, the Investigator shall review the account to ascertain that it is in compliance with Prob. Code § 1060 et. seq. and whether the disbursements are appropriate.

(1/1/08)

8.127 Dispense with Account—When Permitted

A. The Court will consider dispensing with accounts so long as the estate of the ward or conservatee meet the requirements of Prob. Code § 2628. In certain circumstances, the Court may approve an order dispensing with accounts on an ex parte basis. In order to avoid additional expense to the estate, a party may make such an application using Ex-Parte Petition to Dispense with Accounts and Order Thereon.

Final Accounts of guardianship estates will not ordinarily be waived unless all funds are in a blocked account. Final accounts will not be waived in guardianship or conservatorship estates where a bond has not been posted.

B. In the instance of funds being placed in a blocked account, the Court may dispense with accounts upon verification from the

bank that the account is blocked.

(7/1/99)

8.128 Papers to Be Delivered to Court Investigator

A copy of all filings along with the Conservatorship Questionnaire will be kept at the time of filing by the Clerk's Office for forwarding to the Court Investigator's Office.

(1/1/08)

8.129 Compensation for Guardians, Conservators, Trustees, and their Counsel, and for Counsel for a Conservatee or Ward [SUPERSEDED]

[See California Rules of Court 7.1-7.1060]

8.130 Investment by Guardian or Conservator [SUPERSEDED]

[See California Rules of Court 7.1-7.1060]

8.131 Termination of Conservatorship [SUPERSEDED]

[See California Rules of Court 7.1-7.1060]

FUNDS BELONGING TO MINORS

8.132 DEPOSIT OF FUNDS OF GUARDIANSHIP ESTATE IN BLOCKED ACCOUNT [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.133 MONEY BELONGING TO MINOR—TOTAL ESTATE LESS THAN $5,000—PROCEEDINGS UNDER PROBATE CODE §3410, ET SEQ. [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.134 GENERAL INFORMATION ON BLOCKED ACCOUNTS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.135 REQUEST FOR WITHDRAWAL OF MINOR'S FUNDS [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.136 WITHDRAWAL ON MINOR REACHING 18 YEARS OF AGE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

OTHER PROTECTIVE PROCEEDINGS

8.137 SETTLEMENT OF MINOR/CONSERVATEE /INCOMPETENT'S CLAIM [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.138 PAYMENT OF EXPENSES, COSTS AND FEES [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.139 DISPOSITION OF REMAINING BALANCE [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

8.140 PAYMENT TO A SPECIAL NEEDS TRUST, TRUST REQUIREMENTS—JURISDICTION OF COURT [SUPERSEDED]

[See California Rules of Court 7.1-7.1060, reprinted in the Appendix to this volume.]

ADOPTIONS AND RELATED MATTERS

8.141 GENERAL

Upon the filing of any adoption petition or adoption-related matter (including termination of parental rights and freedom from custody and control), the clerk of the Court will send notice of pendency of action to the appropriate investigating agencies. Petitioners are responsible for submitting all moving papers, the appropriate fees, and all additional information required, to the investigating agency.

(1/1/04)

8.142 FINALIZATION

Adoptions may not be set for finalization hearing until all of the following have been completed:

1. The written consents of both birth parents, if living, have been filed with the Court by the Petitioners or by the adoption agency, or all birth parents' rights have been terminated and the appeal period has expired on the order terminating parental rights (an exception is required by termination cases filed under Prob. Code 8604. Termination of parental rights is required prior to adoption finalization in every case where a living parent does not consent, even if the identity or location of the non-consenting parent is unknown.

2. The adoption agency or investigating agency has filed with the Court its written report to recommend granting or denying the petition, and the agency has also filed with the Court the completed and signed Court Report of Adoption (state form VS-44);

3. Petitioners have submitted to the adoption clerk an unsigned Consent and Agreement to Adoption; the proposed Decree of Adoption; and a Request for Default or Uncontested Hearing (Stanislaus County local form.

(7/1/99)

8.143 INDEPENDENT ADOPTIONS

Within 30 days of filing, Petitioners shall be responsible for forwarding a file-marked copy of the adoption petition to the appropriate District Office of the State Department of Social Services. For Stanislaus County residents, this is: SDSS Adoptions Branch, Oakland District Office, 1515 Clay Street, Suite 308, Oakland, CA 94612; tel: (510) 622-2650.

(7/1/99)

8.144 AGENCY ADOPTIONS

Within thirty (30) days of filing, Petitioners are responsible for forwarding a file-marked copy of the Petition to the adoption agency which placed the child in Petitioners' custody.

(7/1/99)

8.145 STEP-PARENT ADOPTIONS

Within thirty (30) days of filing, Petitioners are responsible for forwarding a file-marked copy of the Petition to the agency designated by the county to perform step-parent adoption investigations: Stanislaus County Community Services Agency, Child Welfare Section, P.O. Box 42, Modesto, CA 95353-0042, Attn: Step-parent Adoption Worker. Petitioners must also forward all documentation required by the agency, and must pay the investigation fee within one year of filing the petition. The Court may, on its own motion or on the motion of the investigating agency, dismiss any petition which petitioners have failed to finalize within eighteen months of the original filing date, unless Petitioners can demonstrate good cause for the delay.

(7/1/99)

8.146 KINSHIP ADOPTION AGREEMENTS

Upon request of either party or on its own motion, the Court may refer the parties to private mediation for the purpose of working out the terms of a potential Kinship Adoption Agreement.

(7/1/99)

TERMINATION OF PARENTAL RIGHTS, FREEDOM FROM

CUSTODY AND CONTROL OF PARENTS, AND DECLARATION
TO DISPENSE WITH CONSENT OF BIRTH PARENT

8.147 GENERAL

Upon filing of a petition for termination of parental rights or to free a minor from the custody and control of a parent, the clerk of the Court will send a notice of pendency of action to the appropriate investigating agency. However, petitioners are responsible for forwarding all moving papers and other required documentation to the investigating agency within ten (10) days of the filing date. Petitioners must provide the investigating agency with contact information, including phone numbers and addresses, for themselves, the minor(s), and the birth parents (to the extent known).

(7/1/99)

8.148 TERMINATION OF PARENTAL RIGHTS PURSUANT TO FAMILY CODE SECTIONS 7600 ET SEQ.

A. Investigation under Family Code Section 7663

Prior to the hearing on termination of parental rights pursuant to these sections, the Court must receive and review the investigation report mandated by Family Code Section 7663. It is Petitioners' responsibility to forward a file-marked copy of the Petition to the appropriate investigating agency within ten days of filing, and to cooperate as necessary for the agency to complete that investigation. Petitioners will be expected to provide the investigating agency with all possible information regarding the identity and whereabouts of the alleged father.

1. If the termination action is filed pursuant to an agency adoption, the adoption agency is responsible for filing the report.

2. If the termination action is filed pursuant to an independent adoption, the Oakland District Office of the State Department of Social Services, Adoptions Branch, is responsible for filing the report.

3. If the action is filed pursuant to a step-parent adoption, the Stanislaus County Community Services Agency, Child Welfare Section, or their designee is responsible for filing the report.

4. Notice to Alleged Fathers Petitioners who are unable to locate or identify alleged fathers may request the Court to dispense with notice of the hearing by filing with the Court a sworn written statement specifically describing the attempts to identify and locate the alleged father. Petitioners may then submit the matter to the clerk's office for ex parte consideration by the Court to dispense with notice under Section 7666 and terminate the parental rights. Petitioners must use due diligence in attempting to locate and serve alleged fathers with notice of the action to terminate parental rights, unless the alleged father has signed a Waiver of Notice (State Form # AD590) or Denial of Paternity (State Form #AD588). Due diligence will normally include, but is not limited to, checking telephone listings; searching on the Internet; conducting postal, and voter registration records searches; and contacting known relatives, friends, and former employers of the alleged father for information. Refer also to Local Rule 8.15B.

(7/1/00)

8.149 FREEDOM FROM PARENTAL CUSTODY AND CONTROL

A. Investigation Pursuant to Section 7851

Prior to ruling on the petition, the Court must receive and review the investigation report required by Family Code Section 7851. Petitioners must pay the investigation fee of $380 at the time the petition is filed. Within ten (10) days of filing, Petitioners must forward a file-marked copy of the petition to the Office of the Family Court Investigator, located in the Courthouse. Petitioners must also provide the Investigator with contact information such as telephone numbers and addresses, for themselves, the minor(s), and the birth parents (to the extent known).

B. Notice to Parent

At least ten (10) days prior to the hearing, Petitioners must effect personal service of the citation on the parent(s) from whom the child is being freed from custody. If the whereabouts of a parent is unknown, Petitioners may submit an ex parte application to the Court for an order permitting service by publication in a newspapers of general circulation in the area of the parent's last known residence. In accordance with Family Code Section 7882, this application will only be granted if it is supported by a declaration from Petitioners and other persons with knowledge as to the efforts made with due diligence to locate the absent parent. Due diligence will normally include, but is not limited to, checking telephone listings; searching on the Internet; conducting postal and voter registration records searches; and, contacting known relatives, friends, and former employers of the alleged father for information. Once publication has been ordered, the hearing on the Petition will normally be set approximately

seventy-five (75) days from the date of filing, to permit sufficient time for publication and return of the proof of publication to the Court file.

(7/1/99)

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Sutter County
Probate Rules

This county follows the rules of the Third Appellate District. For probate matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Tehama County
Probate Rules

This county has no specific local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Trinity County
Probate Rules

This county does not have local probate rules. For matters not provided for in Judicial Council forms, the Probate Code, or the California Rules of Court, consult the clerk of the court.

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Tulare County
Probate Rules

Effective January 1, 2010

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CHAPTER 10
PROBATE AND GUARDIANSHIP MATTERS

1000 Calendar and Procedural Matters

(a) Probate Calendar

All probate matters and adoptions will be assigned as set forth in the annual order of the court pursuant to The Superior Court of Tulare County, Local Rules, rule 300. Conservatorships under the Lanterman-Petris-Short Act (hereinafter "LPS"; Welf. & Inst. Code, § 5150 et seq.) will be set only on Tuesdays, and adoption proceedings only on Fridays.

(b) Filing Deadlines

All required moving pleadings in probate matters must be filed with the superior court clerk at least 15 days prior to the hearing date. All Probate Code and court ordered due dates for filing will be strictly observed (e.g., inventory and appraisements, accountings, status reports, receipts on blocked accounts, and receipts from personal representatives on deceased conservatees). Failure to comply with statutory or court requirements may result in imposition of surcharges, or other sanctions, without a showing of good cause.

(c) Filing of Documents and Proposed Orders

All probate documents in decedent's estate must be captioned as required by California Rules of Court, rule 201, and other

applicable codes, except that the hearing date and time must be all in upper case.

(1) Supporting Papers

Supporting papers must be filed at least 10 days in advance of the scheduled hearing date. Proofs of publication may be filed within two days of the scheduled hearing date.

(2) Orders

Except in the case of confirmation of sales and contested matters, proposed orders should be lodged in the court case file at least five days in advance of the scheduled hearing date unless authorized by the court.

(3) Continuance on Untimely Filing

For failure to file supporting papers or other documents necessary to allow the court to rule on the particular matter, the court will automatically continue the matter for two weeks, without a showing of good cause for such failure.

(4) Duties and Liabilities of Personal Representative

As authorized by Probate Code section 8404(b), these rules require the personal representative's birth date and driver's license number on the Acknowledgment of Receipt of the Statement of Duties and Liabilities of Personal Representative.

(5) Inventory Form

All inventory and appraisals must be filed with the Judicial Council form caption page printed on pink paper and attachments on white paper.

(d) Disposition Requirements

In probate matters involving a decedent's estate where a personal representative has been appointed, the court will issue an Order to Show Cause (OSC) regarding the status of the case if a Judgment of Final Distribution, or a Report of Status of Administration, has not been filed within 12 months after probate letters issued in cases where a federal estate tax return is not required. In an estate for which a federal estate tax return is required, the Judgment of Final Distribution or Report of Status of Administration is to be filed within 18 months from the issuance of letters. At the OSC hearing, the court will establish appropriate time limits to accomplish a prompt disposition of the matter.

(e) Special Notice Situations

(1) Special Letters

Except in unusual cases, a party seeking special letters of administration, or temporary letters of guardianship or conservatorship, must give notice of the application to the surviving spouse, proposed ward, domestic partner, conservatee, or other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice. This notice must be given as required for other ex parte orders. (See California Rules of Court, rule 3.1200-3.1207.)

(2) Publication of Notice of Death

The published notice of death is sufficient to include only those instruments that are offered for probate and specifically referred to in the petition for which the notice is given. Any other will or codicil not specifically mentioned in such petition must be presented to the court in an amended petition or a second petition, and notice of that hearing must also be published.

(3) Mailing of Notice of Administration/Notice to Creditors

Notice to known creditors, apart from that published as otherwise prescribed by law, is required under Probate Code section 9050, and proof of said mailing must be filed with the court prior to the filing of any petition for final distribution. "Notice to Creditors" is a Judicial Council form bearing a proof of service on the reverse for completion and filing with the court.

(01/01/07)

1001 Hearing Procedures

(a) Approval of Matters without Hearing

If, after reviewing the file, a matter is unopposed and approved by the court or approved by the court with modification accepted

by counsel, no appearance of counsel will be necessary on the hearing date if written verification of agreement is filed by counsel. If, at the time set for hearing on any such pre-approved matter, any opposition to requested relief is offered in writing, the matter will automatically be continued two weeks and written notice will be given by the clerk to petitioner's counsel of record, unless otherwise directed by the court. If the court refuses to approve the request without hearing due to the petitioner's failure to satisfy statutory or local rules requirements, the matter will be continued for two weeks, without a showing of good cause. All matters will be posted on the court's web site at www.tularesuperiorcourt.ca.gov and on the appropriate links for the probate department the day before each hearing date.

(b) Continuances

Continuances requested by counsel may be made only in court, or through the probate judge's clerk. A continuance will not be granted if there is opposing counsel unless a request is made in open court, or by written stipulation of all counsel, to a date arranged by the probate clerk. If the matter has been specially set, it may not be continued without the written stipulation of all counsel and the approval of the court scheduled to hear the matter. Without a showing of good cause, no more than three continuances will be granted before the matter is dropped from the calendar. If a petition for probate of a will is called for a hearing, and an attorney or party appears and orally objects, the court will continue the hearing for a reasonable length of time, not exceeding four weeks, if the party objecting declares that a written contest will be filed. If such written contest is not actually filed prior to the continued date, the hearing will proceed as if no objection had been made.

(01/01/07)

1002 Contested Matters

(a) Meet and Confer Requirement

If any probate petition is contested or opposed, the parties or attorneys must make a reasonable and good faith attempt to informally resolve the controversy, at a face-to-face conference, before any hearing of the contested petition. If there is no resolution, each party must file a Statement of Issues identifying every unresolved issue with references to any supporting evidence and memorandum of points and authorities on file, and an estimate of the time required for the hearing. Each party must also prepare and file, by declaration, an offer of proof listing the witnesses to be called and the nature and the general subject matter of their testimony. At least two court days before the hearing date, each party must either (1) notify the calendar clerk in the court administrator's office that the controversy has been resolved, or (2) file and serve the Statement of Issues. This rule will not apply to contested LPS conservatorship matters not involving jury trials and for which estimated time for hearing is 30 minutes or less.

(b) Transfer to Trial Calendar

If the hearing on a contested matter is estimated to be 20 minutes or less, the hearing will usually be held before the probate judge on the regular probate calendar. If a hearing on a contested matter is estimated to be more than 20 minutes, and counsel appear at the probate calendar, the matter will be set by the probate judge on the trial calendar.

(c) Objections

Any opponent to a petition, accounting, or other matter scheduled for hearing, except contested LPS conservatorship petitions, must file verified, written objections stating the grounds for such objections prior to the hearing. Notice of any opposition and/or any intention to appear must be given to the attorney for petitioner at least two court days before the scheduled hearing date, unless good cause is shown.

(01/01/07)

1003 Ex Parte Matters

Ex parte petitions will be heard in the court probate department according to the assigned probate judge's determination on any court day, subject to the probate judge's availability. In the probate judge's absence, ex parte matters will be heard by another judge. Appointments for ex parte hearings must be made through the clerk of the court (room 201 of the Visalia courthouse), and the court investigator's office must have 24-hour notice of an ex parte hearing on a temporary or general conservatorship for review of the documents and preparation of the Document Examiner's Checklist, if appropriate, before the ex parte conservatorship or guardianship matter will be heard.

No application for an ex parte order, or a temporary restraining order which has been previously rejected by a judge of this court, shall be presented to any other judge of this court without the judge to whom it is being presented being expressly informed of the circumstances of the previous application and the reasons for its denial.

(a) Contents of Petition

All petitions for an ex parte order must be verified by the petitioner and must contain sufficient evidentiary facts of the emergency nature of the petition to justify issuing the order. Conclusions or statements of ultimate facts are not sufficient, and a foundation must be shown for the petitioner's personal knowledge.

(b) Special Notice Allegation

All petitions for ex parte orders submitted after the initial appointment of the personal representative must contain a statement on special notices. The statement must either recite that no request for special notice is on file and in effect, or it must list the parties requesting special notice and have attached the specific waivers of notice by such parties or proof of service on such parties.

(c) Notice to Counsel or Opposing Party

Where the emergency nature of the application is apparent and the court elects to consider the matter ex parte, but the need for an opportunity to be heard is also apparent, moving counsel must give at least six business hours' notice of the nature of the application and the time and place of the hearing to counsel for other interested parties or to unrepresented interested parties. Before the court will proceed with the hearing, moving counsel must submit a declaration to the court factually setting forth efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice.

(d) Separate Order Must Accompany Petition

Except where a Judicial Council form is used, a petition for an ex parte order must be accompanied by a separate order complete in itself. It is not sufficient for such order to merely provide that the application has been granted, or that the sale of property or security set forth in the petition has been approved.

(e) Sale of Personal Property

Ex parte petitions for approval of sale of depreciating or perishable personal property pursuant to Probate Code section 10000 et seq. must set forth the appraised value of such property. Ex parte petitions for the sale of securities must set forth the established stock or bond exchange applicable to the sale, or if there is no such exchange, then the amount of the minimum sales price must be stated.

(01/01/07)

1004 Probate Referee Procedures

(a) Appointment of Probate Referee

The State Controller's office maintains a list of approved probate referees in each county. Applications for appointment of one of the approved probate referees for Tulare County may be filed with original petitions or moving papers. If a referee is not appointed on the order for probate, an original and one copy of an application for appointment of a referee must be filed with the clerk. Such application should not be made earlier than the time at which the order of appointment of executor, administrator, guardian, or conservator is submitted.

(b) Submission of Inventory

All inventories and appraisals for sales (whether initial or subsequent) must be received from the appointed referee and filed with the clerk of the court at least two weeks prior to any court appearance involving a sale or distribution of any assets contained in such inventory and appraisal.

(c) Statement Regarding Bond

Items 5 through 8 of the "Inventory and Appraisal Form" (DE-160) must be fully completed as to the particulars of the bond, or assurance to the estate, in all matters requiring the filing of an inventory and appraisal except for Spousal Property Petitions and Summary Administration proceedings under Probate Code section 13100 et seq.

(01/01/07)

1005 Accountings and Final Distributions

(a) General Requirements

The format for all accountings filed in probate proceedings, including guardianship, conservatorship, and decedent's estates and trust accounts, must be in conformance with Probate Code section 10900 et seq. and the materials set forth in the following continuing education of the bar publications: California Decedent Estate Practice, California Conservatorships, and California Trust Administration. All accountings must set forth the beginning and ending dates of the accounting period, contain a summary or recapitulation of all charges and credits to the fiduciary, and be presented in a standard financial statement format entitled, "Summary of Account." (See Prob. Code, § 10900 for proper format.) The "Summary of Account" must be included in the body of the petition, or incorporated by reference, and charges and credits must balance.

(b) Supplemental and Amended Accounts

A supplemental accounting in a decedent's estate must include only receipts and disbursements occurring since the ending date of the last filed accounting. A supplemental account is not to be used to amend or correct the last filed account. An "Amended Accounting" must be filed to change the last accounting filed. Any supplemental or amended accounting must be noticed for hearing, unless the court by order dispenses with notice.

(c) Waiver of Accounting

Even though an accounting has been waived, the report that is made in lieu thereof must state how much is to be paid to the attorney and the representative and set forth the manner in which such compensation is calculated. The report must also clearly identify the assets in the estate on hand at the end of the accounting period. "Waivers of Accounting on Final Distribution" must comply with Probate Code section 10954. Applications for "Waiver of Accounting" must be included in the caption of the Petition and in the Notice of Hearing.

(d) Preliminary and/or Final Distribution Requests

In any request for distribution, sufficient facts must be set forth as to known creditors' claims, contingent claims, administration expenses, taxes, projected fees and commissions, and other necessary information, in order for the court to determine that the estate is solvent and that the distribution may be made as prayed. It is not sufficient to merely state that all claims have been paid. The claims presented must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of the notice of rejection of the claim must be stated. The allegations regarding disposition of all claims must appear in the petition for final distribution even though such allegations may have appeared in whole or in part in prior petitions. A request for preliminary distribution must also indicate why the estate is not in a condition to be closed.

(e) Distribution Petitions and Orders

A petition for distribution must describe in detail all property to be distributed either in the body of the petition, in the prayer, or by an Account Summary incorporated in the petition by reference. An order of distribution must be drafted so that it is complete without reference to the petition, and without reference to any documents which are not part of the order. Complete legal descriptions of all assets and the full names of all distributees must be set forth in the order, not attached thereto. Nothing shall follow the signature of the judge.

(01/01/07)

1006 Family Allowance

Before an inventory is filed, the court may order a family allowance, as provided in Probate Code sections 6540, 6541, and 6542. If a petition for a family allowance order is filed more than six months after the personal representative has been appointed, or after the inventory has been filed, or is a petition for a second or increased allowance, it must be noticed and placed on the calendar. Such orders will be limited to a definite period, usually not to exceed 12 months. It is the court's policy not to make orders for family allowance for an unlimited period.

If any estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a family allowance without prior court order by following the Notice of Proposed Action procedure as set forth in the Probate Code.

(07/01/97)

1007 Procedures for Temporary and General Guardianships

All persons petitioning the court for a general guardianship must do the following:

(a) Purchase the guardianship packet from the clerk of the court.

(b) Attend the court's guardianship orientation and receive a certificate of completion.

(c) All self-represented petitioners must make an appointment with the self-help attorney at (559) 737-5500 to have the court documents reviewed. More than one appointment may be necessary to ensure the documents are complete and correct before filing with the clerk of the court.

(d) File the petition and all supporting documents, including the "Certificate of Completion of the Guardianship Orientation and Guardianship Checklist."

(e) If the court refers the petition to Family Court Services for investigation, the court, prior to the commencement of the investigation, must sign an order appointing the investigator.

(f) An order appointing a general guardian may not be issued before each of the petitioners has completed all of the following:

(1) Attended the guardianship orientation;

(2) Filed the "Certificate of Completion of the Guardianship Orientation";

(3) Signed the "Authorization to Release Department of Justice Information" to the court;

(4) Paid $42.00 in check or money order for the Department of Justice LiveScan fingerprinting process.

(g) An order appointing a general guardian may not be issued until a fingerprint clearance has been received from the Department of Justice.

(h) An order appointing a general guardian must not be issued before every person over the age of 18 residing in the proposed guardian's home has completed the fingerprint process and clearance has been received.

(i) An order appointing guardian will not be issued before the petitioner(s) has signed and filed all of the following documents with the clerk of the court:

(1) "Consent to Serve as Guardian";

(2) "Duties of Guardian";

(3) "Guardianship Questionnaire";

(4) "Proper Notice of Hearing/Citation," if appropriate;

(5) "Uniform Child Custody Jurisdiction and Enforcement Act" form (UCCJEA);

(6) "Confidential Guardianship Screening" form; and

(7) "Orders Appointing Guardian and Letters of Guardianship" (lodged with the clerk of the court).

(j) If the court refers a guardianship petition to the court investigator, the investigator must interview the proposed guardian(s) and ward(s), and complete and file a report prior to the general hearing for guardianship. The court investigator has discretion regarding collateral contacts and review of records at the direction of the court for each case.

(k) All parties seeking an ex parte temporary guardianship must do the following:

(1) Set an appointment with the probate judge's clerk at least 24 hours prior to the hearing;

(2) Comply with all statutory notice requirements;

(3) File the petition for temporary and general guardianship and all supporting documents, including the guardianship checklist; and

(4) Secure a hearing date from the clerk of the court for the general hearing, and enter the hearing date on the proposed temporary order as the date of expiration of the temporary orders. No temporary orders will be signed without an expiration date.

(l) If a referral is made by the court for an investigation, the court will calendar the hearing for no less than 45 days from the date the investigation was ordered.

(m) If the temporary letters of guardianship expire prior to the hearing for general guardianship, the letters must be renewed. This may be done by submitting an order and "Temporary Letters of Guardianship" to the clerk of the court. The clerk of the court will send the documents to the judge for approval.

(n) All confidential documents will be maintained in a confidential envelope in the court case file and will not be released for viewing by the public.

(o) Unless otherwise notified by the court, appearance of counsel and/or parties is required at the time of hearing in the following matters:

(1) Appointment of guardian;

(2) Termination of guardianship other than by death of a ward or by the ward attaining majority;

(3) Confirmation of sale of real or personal property; and

(4) All contested matters

(p) All guardians of the estate must either (1) Petition the court for waiver of accountings if the estate meets the requirements of the Probate Code, or (2) file an annual accounting within 60 days after the anniversary date of the issuance of Letters of Guardianship. The court investigator must be served conformed copies of any accounting documents on the day it is filed.

(q) Complaints Regarding Minor's Counsel in Probate Guardianship Cases. The court maintains a list of attorneys who may be appointed counsel for children in guardianship matters. These attorneys have completed the required training and have filed the required judicial council form with the court. The court uses a rotation system to appoint the attorneys.

In a guardianship proceeding in which the court has appointed counsel for minor children, any party or counsel or minor child may present a written complaint about the performance of appointed counsel pursuant to Probate Code section 1470. The complaint must be filed and served on all counsel and self-represented parties, and a copy must be delivered to the courtroom clerk for the Presiding Family Law Judge. The court will respond to the complaint within 30 days, either by setting the matter for hearing or by issuing a written response. (Cross reference Local Rule 932)

(01/01/07)(Revised 01/01/09)(Revised 01/01/10)

1008 Procedures for Temporary and General Probate Conservatorships

All persons petitioning the court for a general conservatorship must do the following:

(a) File the petition and all supporting documents, and at least two additional copies, with the clerk of the court. A signed order by the court appointing the court investigator and an order appointing counsel for the conservatee, if requesting dementia powers, must be submitted with the petition. (This can be obtained by an ex parte hearing pursuant to California Rules of Court, rule 3.1200-3.1207.) A conformed copy of the petition and all supporting documents must be served on the court investigator's office on the day of filing.

(b) In all cases where dementia or limited powers are requested, counsel must be appointed. If the proposed conservatee qualifies for the services of the public defender, the order appointing counsel may provide for the appointment of the public defender. Otherwise, private counsel must be retained and appointed. If the order appointing counsel has been filed, the petitioner must prepare one additional copy of the petition and all supporting documents for the appointed attorney.

(c) Obtain a hearing date upon filing of all the necessary documents. No hearing date will be issued without an order appointing the court investigator and an order appointing counsel for the conservatee, if appropriate.

(d) All confidential documents shall be placed in a confidential envelope by the clerk of the court. The general public will not have access to these documents.

(e) Each document shall be filed and registered separately in the court's case management system.

(01/01/07)

1009 Orientation Program

Each proposed conservator, except the public guardian and previously qualified private professional conservators, must attend the orientation program provided by the Court before letters are issued.

(a) A proposed conservator must purchase The Conservatorship Handbook prior to attending the orientation program. Petitioner's receipt for the purchase of The Conservatorship Handbook shall be filed in the court file and a copy of the receipt shall be provided to the court investigator.

The Conservatorship Handbook is available for sale in the office of the clerk of the court for $25.00.

(b) The "Certificate of Attendance to the Orientation Program for Proposed Conservators" must be filed with the clerk of the court no later than five court days before the scheduled hearing on the petition for appointment of a general conservator. Failure to meet this requirement will result in the petition for appointment being continued for further hearing.

(01/01/07)(Revised 01/01/09)

1010 Ex Parte Motions for Temporary Conservatorships

All persons seeking temporary appointment as a probate conservator must complete the following:

(a) Set an appointment with the clerk of the judge acting as the probate judge at least 24 hours prior to the hearing;

(b) Comply with all statutory notice requirements;

(1) File the petition for temporary conservatorship and general conservatorship and all the supporting documents;

(2) Secure a hearing date from the clerk's office, Room 201, for the petition to appoint a temporary probate conservator and enter the hearing date on the proposed temporary order as the date for expiration of the temporary order and letters;

(3) Deliver to the document examiner/court investigator (room 203), at least 24 hours prior to the hearing, the following:

a. The "Petition for Appointment of Probate Conservator" and "Petition for Appointment of Temporary Probate Conservator";

b. All supporting documents (capacity declaration, confidential supplemental, conservator screening form, etc.);

c. A copy of the "Order Appointing the Court Investigator";

d. A copy of the "Order Appointing Counsel for the Conservatee," if dementia powers are requested;

e. The proposed "Temporary Order" and "Temporary Letters";

i. The Temporary Order and Letters must have an ending or expiration date which is 30 days or less from the date the temporary letters were issued;

ii. A reconsideration hearing must be held within 30 days of the issuance of Temporary Letters to extend the Temporary Order; and

f. The proposed general order and "Letters Appointing Conservator."

(4) Temporary orders appointing a conservator will not be signed by the court without prior review by the document examiner.

(c) The document examiner will review the documents and provide the court with a checklist indicating the completeness of the documents prior to the hearing.

(d) Once a hearing date has been issued on the petition for general conservatorship, it may not be removed from the calendar except by written stipulation and order of the court.

(01/01/07) (Revised 01/01/09)

1011 Providing Information

(a) All proposed conservators, except the public guardian and previously qualified private professional conservators, must complete and file, with the petition for temporary and general conservatorship, a "Conservatorship Questionnaire" utilizing the form provided by the court (available at the office of the clerk of the court) and signed under penalty of perjury.

(b) All proposed conservators filing initial petitions for probate conservator, except the public guardian and any previously qualified private professional conservators, shall provide the appropriate information for, and be subject to, the Live Scan fingerprints in order that a CLETS record check can be done on the correct person.

(c) "Letters of Conservatorship" may not be issued without proof of fingerprint clearance.

(d) Information obtained by the court investigator shall remain in the file which is maintained by Family Court Services. This information shall not be released to any person unless reviewed in camera by a bench officer and an order is made for its release.

(01/01/07) (Revised 01/01/09)

1012 Out of State Conservators

Generally, no out of state conservator will be appointed unless good cause is shown.

(01/01/03)

1013 Care Plans

All conservators must file a "Conservatorship Care Plan" prior to issuance of general letters. Care plans may be submitted on the "Conservatorship Care Plan" form or any other format providing all the information requested on the Conservatorship Care Plan is included.

(a) An original and two copies of the care plans must be filed with the clerk of the court at least five court days prior to the hearing date for appointment of general conservator.

(b) The copy of the care plan filed with the clerk of the court must be served on the court investigator/document examiner's office on the day of filing.

(c) Care plans must be approved by the court prior to issuance of general "Letters of Conservatorship."

(d) The care plan must include the frequency of visitation to the conservatee by the conservator.

(e) If the conservatee is placed out of county, the conservator may use designated agents to monitor the conservatee's needs, and may consult with the conservatee by telephone, as necessary.

(f) The court expects a conservator to visit a conservatee with sufficient frequency to assure that the conservatee's needs are being met. The frequency of visitation will vary depending on the conservatee's living situation and needs. The following guidelines for visitation must be observed:

(1) If a conservatee is living in a state developmental center, skilled nursing facility, subacute hospital, or hospital setting, the court expects the conservator to visit at least once per month.

(2) If the conservatee is living in a board and care facility, private residence, or has another living arrangement, the court expects the conservator to visit at least twice per month.

(3) All plans for visitation should include an explanation of why the proposed frequency of visitation is appropriate.

(4) Exception may be made by showing good cause or if a substitute or surrogate for the conservator (e.g., senior companions, advocates, etc.) makes regular, face-to-face visits with the conservatee as outlined above.

(g) In cases where care plans are not approved by the court, the court will calendar the case for hearing and the conservator and/or his representative must appear in court to discuss the changes necessary to gain court approval of the care plan.

(h) All care plans must be submitted to the Court Investigator's office within 30 days of receipt of a request for an updated plan.

(01/01/07)(Revised 01/01/09)

1014 Independent Exercise of Powers

The conservator or guardian has broad powers to act for the conservatee's or ward's benefit under Probate Code sections 2400 through 2586. If necessity requires a grant of independent powers under Probate Code sections 2590 through 2595, the court will generally limit such grant to specific factual situations. The following rules will apply to all cases involving such independent powers:

(a) Temporary Conservatorship/Guardianship

Independent powers will be granted to a temporary conservator or guardian only in unusual situations upon a showing of good cause.

(b) Factual Showing

The court will require a factual showing, by verified petition, affidavit, or declaration by the petitioner that (1) the power requested is needed to administer the estate or protect the conservatee/ward; and (2) the granting of such power would be to the advantage, benefit, and in the best interests of the estate and/or the conservatee/ward.

(c) Specific Enumeration of Powers

Each power must be described in detail by quoting the specific language of the subsection enumerating the requested power. It is not sufficient to incorporate by reference Probate Code section 2591 in the petition.

(d) Real Property Description

Where the power to sell real property is requested, and the property which may be sold includes the conservatee's home or former home, this fact must be specifically disclosed to the court in the petition.

(e) Court Confirmation of Real Property Sales

Where the power to sell real property is granted, the court will require the sale to be returned to the court for confirmation. This requirement may be waived by the court upon showing of good cause.

(f) Enumerated Special Powers in Order and Letters

Any special powers granted must be specifically set forth in the Order and the "Letters of Guardianship or Conservatorship" (Prob. Code, § 2594).

(01/01/07)

1015 Surety Bonds

A minimum bond of $10,000 is required in all conservatorships/guardianships of the estate. The court must make a finding of good cause for the bond to be waived. A copy of the bond shall be filed in the court file each time a bond is renewed.

(01/01/07)

1016 Sanctions

Sanctions or surcharges may be imposed by the court for incorrect or incomplete filing of probate conservatorship or guardianship documents.

(01/01/07)

1017 Termination

(a) When a petition seeks termination of a conservatorship for a reason other than the death of the conservatee, the court will require the appearance of the conservatee at the hearing on the petition. A copy of such petition must be provided to the court investigator's office on the date of filing. The petition must include an updated Capacity Declaration completed by a qualified physician who has regular contact with the conservatee.

(b) Within 30 days of the death of the conservatee, or as soon as practicable thereafter, the conservator must notify the court and the court investigator by providing a certified copy of the death certificate.

(01/01/07) (Revised 01/01/09)

1018 Accountings for Conservatorships and Guardianships

Accountings of conservators and guardians must follow the format prescribed in these rules for decedents' estates and in Probate Code section 2620. Reports of conservators and guardians must contain the current address and phone number of the conservatee or ward, as well as of the conservator or guardian. Any change of address should also be noted in the petition, or in any separate pleading, at the time the change is made.

(a) Adequacy of Bond

Reports of conservators and guardians, at the annual and biannual reviews, must state the amount of the current bond (or bonds in the event two or more bonds are on file) and state whether any additional bonds are necessary to protect unblocked personal property plus one year's estimated income. Each report should also show any blocked bank accounts or assets impounded with a depository. Any significant changes in the value of assets should be reported, together with the effect on the adequacy of the bond. The conservator must consider the possible need for reappraisal and inform the court of any such need.

(b) The Inventory and Appraisal and the Final Accounting of the Estate.

The I&A and Final accounting must be filed (Probate Code 2601a) and are not waived with a Waiver of Accounting unless otherwise ordered by the Court.

(c) Accounting Deadlines

A final accounting should be filed consistent with Probate Code section 2620, subdivision (a). If the document examiner has reviewed the accounting and submitted comments to the court, that review shall be provided to the public guardian no later than five days prior to the scheduled or continued hearing date. If an accounting is not filed as required, the court will issue and serve an Order to Show Cause why the accounting has not been filed.

(d) Waiver of Accountings

Except as expressly provided in the Probate Code, the probate court will not approve any request or petition for waiver of any accounting or of a final accounting upon the death of the conservatee or ward, termination of conservatorship or if the conservator resigns or is removed.

(e) An accounting waiver in conservatorships and guardianships for small estates may be approved at the court's discretion under the provisions of Probate Code section 2628, provided that (1) such waiver was previously approved in an initial filing; or (2) a verified petition in support of the waiver is filed and noticed for hearing.

(f) If accountings have been waived, the court will require that they be reinstated if circumstances of the estate change.

(01/01/07) (Revised 01/01/09)

1019 Conflict of Interest

Attorneys who are appointed by the court to represent conservatees/wards or proposed conservatees/wards, pursuant to Probate Code sections 1470 and 1471, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the conservator/guardian in the same conservatorship/guardianship.

(01/01/03)

1020 Final Distribution in Conservatorships and Guardianships

(a) Death of Conservatee or Ward

A petition for final distribution upon the death of a conservatee or ward will be approved only after appointment of a personal representative of the conservatee's or ward's estate, or under other provisions for disposition pursuant to Probate Code section 2631(b) (regarding small estates). The petition must identify the personal representative and the court and case number of the probate proceeding for the decedent. If disposition of assets under Probate Code section 2631 is requested, the petition must contain factual statements required under that section and under the applicable chapter of the Probate Code (Prob C §§ 13000 et seq.).

(b) Investigator's Assessment

Prior to the granting of a Petition for Termination of a conservatorship, the Court will determine that the court investigator's assessment for services rendered to the conservatorship estate has been paid.

(01/01/07)(Revised 01/01/09)

1021 Limited Conservatorships

The involvement of a developmentally disabled conservatee must be clearly set forth in all conservatorship and guardianship

petitions and accountings. Any conservatorship proceeding requiring a regional center report must be set at least 30 days after mailing notice of the proceeding to the regional center, to allow the regional center report to be filed prior to the hearing. The form attached as Appendix 6 may be photocopied and utilized to facilitate ordering the regional center report and appointment of the public defender to represent the conservatee.

(a) Review of General Conservatorships

In existing general conservatorships involving a developmentally disabled conservatee, the court may direct that a new petition for conservatorship be filed under the limited conservatorship code provisions.

(b) Accountings

Any accounting required in LPS or limited conservatorship matters must comply with the accounting requirements in other Tulare County conservatorship estate matters unless otherwise directed by the department designated to hear the LPS calendar. A copy of limited conservatorship accountings (but not LPS accountings) must be furnished to the office of the court investigator at the date of filing. If the conservatee's assets meet the criteria for waiver of accounting as set forth in the Probate Code, a conservatorship shall be of the person only and any income shall be handled through a representative payee, if appropriate.

(c) Closed Status Reports

Reports by a regional center and the court investigator, and other documents or materials containing sensitive information filed in conservatorship files, must be maintained in a confidential envelope in the court case file with disclosure only to those persons authorized to receive such reports, as specified under Probate Code section 1826(n), or to authorized persons pursuant to court order.

(07/01/07)

LANTERMAN-PETRIS-SHORT ACT (LPS) CONSERVATORSHIPS
(Welf. & Inst. Code, § 5150 et seq.)

1022 Individualized Treatment Plan

(a) A copy of the individualized treatment plan required by Welfare and Institutions Code section 5352.6 must be filed with the court within 10 days of the establishment of the conservatorship. At the time of the establishment of the conservatorship, the court will set a review hearing within 20 days thereafter to review the amendments to the proposed treatment and service plan. Any party who objects to the plan as filed, may, after attempting to resolve the matter informally, calendar the case for a hearing on the individualized treatment plan.

(b) The individualized treatment plan must fully comply with Welfare and Institutions Code section 5352.6, and particularly in the following respects: (a) the person responsible for developing the treatment plan must encourage the participation of the conservatee and the conservatee's family members, when appropriate, in the development, implementation, revision, and review of the treatment plan; (b) the plan must specify goals for the individual's treatment, the criteria by which accomplishment of the goals can be judged, and a plan for review of the progress of the treatment; and (c) the goals of the treatment plan must be the equivalent of goals to reduce or eliminate the behavioral manifestations of grave disability. All of the foregoing must be evidenced on the face of, or by attachment to, the plan.

In connection with the plan for review of the progress of the treatment, an individualized treatment plan must specify (a) the planned frequency of review of the conservatee's progress under the plan, including review of the use of prescribed medication and its effects on the conservatee, and by what professional persons such review must be undertaken; and the planned frequency of physical contact with and observation of the conservatee in placement by the conservator.

Each individualized treatment plan must be approved by a professional person who has knowledge, training, professional qualifications and skill necessary to make the determinations mandated by Welfare and Institutions Code section 5352.6. The professional qualifications must be evidenced by a specific recitation thereof attached to the plan.

Each individualized treatment plan must be subscribed by the approving professional person under penalty of perjury attesting that (a) the professional person approving the plan has read the plan; (b) the professional person approving the plan has reviewed the medical/psychiatric/social history of the conservatee; and (c) the treatment plan is medically and psychiatrically appropriate to the conservatee's needs and history.

(c) The court will set for hearing and review the progress of the LPS conservatee and the conservator in implementing the treatment plan and the conservatee's progress in treatment. This must be set forth in a written report to be filed with the court at least two weeks prior to the hearing with copies to be furnished to counsel for the conservator, the conservatee, and the county

patient's rights advocate. Such report must be reviewed with the conservatee. The conservatee's response to such review, and any request for amendment to the treatment plan, must be reported to the court. The written review report must also incorporate the views of any family members interested in the conservatee's welfare as to whether the treatment services specified in the plan have in fact been provided and whether progress has been made in achieving the treatment plan goals.

Notice of such hearing must be given to the conservatee, conservatee's counsel, and interested relatives who must be advised of their right to be personally present at such hearing. The conservator must provide for the conservatee's personal presence at the review hearing unless personally waived in writing by the conservatee and the conservatee's counsel, and approved by the court.

(d) The individualized treatment plan filed with the court must also be provided to counsel for the conservator, the conservatee, and the county patient's rights advocate, and must contain proof that they have been so provided. All treatment plans and review reports must prominently advise the conservatee of the name, address, telephone, and fax number to the patient's rights advocate. If the patient's rights advocate has provided services to the conservatee, the conservatee's request to the advocate and the services provided must be set forth in the review report.

(07/01/00)

1023 Venue

Tulare County jurisdiction is composed of one division, namely Tulare County. Original petitions must show the proper venue and be filed in the Tulare County Superior Court.

(11/08/01)

1024 Change of Venue

Requests for change of venue must be directed to the judge assigned to LPS proceedings. The request should take the form of a declaration stating the reasons why a change of venue is required and be supported by reference to appropriate points and authorities. The judge may waive the declaration in cases of emergency.

(01/01/07)

1025 Orders

Orders at variance with rules may be granted by the judge assigned to LPS proceedings on the showing of good cause.

(01/01/07)

1026 Definitions

(a) "Hearing Officer" means persons appointed to conduct capacity and certification hearings (Welf. & Inst. Code, §§ 5334(c) and 5256.1);

(b) "Facility" means any public or private facility under contract to provide services paid by county mental health, or any hospital licensed to provide acute care inpatient psychiatric treatment. (The only facility presently licensed in Tulare County is Kaweah Delta Mental Health Hospital.);

(c) "Patients' Rights Advocate" means the designated Title IX patients' rights advocate who will assure that patients are informed of their right to pre-admission hearings and assure that patients who waive the right to a hearing have done so freely, voluntarily, and intelligently;

(d) "Public facility" means any facility owned or operated by the State of California or the County of Tulare;

(e) "Professional person" means a psychiatrist, psychologist, social worker with a master's degree, licensed marriage and family therapist, or registered nurse.

(11/08/01)

LPS HEARING OFFICERS, ATTORNEYS, AND
ATTORNEY FEES AND COSTS

1027 Services Subject to Compensation

The public defender is appointed to represent indigent patients in LPS proceedings. If the court finds that an LPS patient is not

indigent, the court shall appoint private counsel to represent the patient. However, in any case where counsel has been appointed to represent persons coming under the LPS Act, or other related mental health law proceedings, and where payment of attorney fees will be made by the County of Tulare through the Office of Alternate Defense Counsel, the determination of which attorney services are to be compensated by the client will be made by the court.

(01/01/07)

1028 Costs Subject to Reimbursement

In those cases where the patient has sufficient funds to reimburse the attorney for costs incurred relative to the case, the determination of which costs are to be reimbursed will be made by the court upon a timely request by counsel.

(11/08/01)

1029 Appointment of Counsel/Prosecuting Agency

The public defender or the alternate defense counsel is appointed to represent all patients in mental health matters, unless the court authorizes a substitution of attorney. The Tulare County District Attorney's Office will prosecute the writs of habeas corpus until such further notice (St. Joseph Hospital v. Kuyper (1983) CA3d 1086). Counsel for Kaweah Delta Mental Health Hospital will represent the physician in Riese hearings and Riese appeals. A patient may decline appointed counsel in which case the hearing officer or court will obtain an oral waiver on the record or a written waiver.

(11/08/01)

1030 Appointment of Hearing Officers

Hearing officers must be attorneys and appointed as described in Welfare and Institutions Code sections 5256.1 and 5334(c).

(11/08/01)

LPS CALENDARED HEARINGS

1031 CALENDARS

(a) All proceedings in LPS conservatorships, LPS writs of habeas corpus, and Riese medication capacity writs/appeals will be heard at the Tulare County Superior Court, Visalia Division, by the judge assigned to handle such matters. Proceedings related to LPS conservatorships will be heard on Tuesdays from 8:30 a.m.-10:00 a.m. Proceedings related to LPS writs of habeas corpus and Riese medication capacity writs/appeals will be heard within two court days of the filing of the petition as set forth in Tulare County Superior Court Local Rules, rule 1034.

(b) Certification review hearings under Welfare and Institutions Code sections 5250 (14-day hold) and 5270.15 (additional intensive treatment 30-day hold) will be heard at the facility where the person is receiving treatment by the mental health hearing officer appointed to administer certification review hearings as set forth in Tulare County Superior Court Local Rules, rules 1034 and 1041.

(c) Original Riese medication capacity hearings will be heard at the facility where the person is receiving treatment by the mental health hearing officer appointed to hear such matters as set forth in Tulare County Superior Court Local Rules, rules 1034 and 1051.

(d) Proceedings pursuant to Welfare and Institutions Code section 6500 and In Re Hop will be heard at the Tulare County Superior Court, Visalia Division, by the judge assigned to handle such matters on Thursdays from 8:30 a.m. -10:00 a.m. (See Chapter 12, rules 1200 et seq. for full requirements on these proceedings.)

(e) The place and time for conducting the regular calendars may be changed by order of the judge assigned to hear mental health matters.

(01/01/07)

1032 Calendaring Hearings

Jury trials will be set by the judge assigned to hear LPS matters in his/her department.

(01/01/07)

1033 Date of Hearings

All petitions in mental health matters which require a hearing, except hearings which may be heard ex parte, will whenever possible, upon being filed with the court, be set by the legal filings clerk, in the Legal Filings Division of the superior court, on the customary hearing date for such matters.

(11/08/01)

LPS WRIT OF HABEAS CORPUS
(Welf. & Inst. Code, § 5275)

1034 FILING PETITIONS, SCHEDULE FOR CERTIFICATION REVIEW HEARINGS, ORIGINAL RIESE MEDICATION CAPACITY HEARINGS, WRITS OF HABEAS CORPUS, AND RIESE MEDICATION CAPACITY WRITS/APPEALS HEARINGS

(a) The mental health hearing officer will perform certification review hearings on Tuesdays and Fridays at Kaweah Delta Mental Health Hospital unless approved otherwise by the hearing officer.

(b) The mental health hearing officer will perform original Riese medication capacity hearings on Mondays, Wednesdays, and Fridays at Kaweah Delta Mental Health Hospital at 4:00 p.m. unless otherwise approved by the hearing officer.

(c) Hearings on writs of habeas corpus and Riese medication capacity writs/appeals will be conducted at the Tulare County Superior Court, Visalia Division, within two court days of the filing of the writ or appeal as follows:

Petitions filed on Mondays will be heard on Wednesdays at 8:30 a.m.

Petitions filed on Tuesdays will be heard on Thursdays at 8:30 a.m.

Petitions filed on Wednesdays and Thursdays will be heard on Fridays at 8:30 a.m.

Petitions filed on Fridays will be heard on Mondays at 8:30 a.m.

Any hearing date that falls on a judicial holiday will be heard on the next court day.

(d) Petitions for a writ of habeas corpus or Riese medication capacity writ/appeal must be filed with the clerk of the court assigned to mental health matters. The Riese medication capacity writ/appeal must be filed with a proposed order. Petitions will be accepted for filing and file stamped immediately upon presentation to the clerk. The clerk will give notice of the hearing date, time, and place by facsimile service to those parties requiring such notice.

(e) Hearings on petitions for writs of habeas corpus and Riese medication capacity writs/appeals shall have priority over any other matter set on the court's calendar and shall be heard promptly at 8:30 a.m. The clerk of the court shall calendar the matter so that the writ or appeal is the first case called and heard by the judge assigned to hear the matter.

(01/01/07)

1035 Applications For Writ Seeking Release or Modification of Custody

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form approved by the Judicial Council. (See Judicial Council Form MC-265, attached hereto as Exhibit 1, entitled "Petition for a Writ of Habeas Corpus.")

(01/01/07)

1036 Writ of Habeas Corpus and Riese Medication Capacity Writ/Appearance

A hearing on a writ or Riese medication capacity writ/appearance must be scheduled at the time the writ or Riese appeal is filed. The mental health clerk will notify the facility, counsel for the facility, the public defender, and district attorney (writs only) of the scheduled date, time and place for the hearing. The petitioner on writs and real parties in interest must be present at the time, and place set for hearing unless their appearances are waived or as otherwise agreed upon by all parties. The court will permit attendance of witnesses and the LPS petitioner by court call upon the consent of all parties. The hearing will be held within two court days of filing as noted in Tulare County Superior Court Local Rules, rule 1034. Notice of Hearing must be pursuant to attached Exhibit 1-A, a mandatory court form entitled "Medication Capacity Appeal."

(01/01/07)

1037 Burden

An evidentiary hearing may be held, and the county will bear the burden of justifying the detention. Preponderance of the evidence is the standard of proof for writs of habeas corpus (In re Azzarella (1989) 207 CA3d 1240)." The court will utilize the form entitled "Orders After Hearing" for orders after the writ of habeas corpus or medication capacity hearings. (See Exhibit 1-B, a mandatory court form entitled "Medication Capacity Orders after Hearing.")

(11/08/01)

LPS CERTIFICATION REVIEW HEARINGS
(Doe v. Gallinot (1981) 657 F 2D 1017, 9th Cir.)
(Welf. & Inst. Code, § 5256)

1038 Compliance with Welfare and Institutions Code

Certification review hearings must be held in compliance with Welfare and Institutions Code sections 5256 et seq.

- Section 5250 pertains to a 14-day hold, and
- Section 5270.15 pertains to additional intensive treatment, 30-day hold.

Under Welfare and Institutions Code section 5260, additional 14-day holds for suicidal persons will require the affidavits of two physicians. No certification review hearing is required. The patient must be informed of the right to file a writ of habeas corpus by the facility or patient rights advocate.

(11/08/01)

1039 Burden

Certification review hearings require probable cause which means "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion" that the person is mentally disordered and as a result thereof is a danger to others, and/or self, or is gravely disabled (People v. Triplett (1983) 144 Cal.App.3d 283, 288; Welf. & Inst. Code, § 5256.6; Heater v. Southwood (1996) 42 Cal.App.4th 1068).

(11/08/01)

1040 Procedures

The mental health hearing officer is appointed to administer/or conduct certification review hearings in compliance with Welfare and Institutions Code sections 5256 et seq. All persons involuntarily detained in psychiatric hospitals (private and public) in Tulare County must have a certification review hearing in the following cases under Welfare and Institutions Code sections:

- Section 5250 (regarding a 14-day hold), and
- Section 5270.15 (regarding additional intensive treatment, 30-day hold)

Hearings will be held for all persons regardless of the basis for certification. Hearings will be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person, or his or her attorney, or patient's rights advocate. Hearings may be postponed for 48 hours. The following will apply to certification review hearings held in Tulare County:

(a) Certification review hearings will be conducted at the facility where the person is receiving treatment. The location of the certification review hearing must be compatible with, and least disruptive of the treatment being provided to, the person certified (Welf. & Inst. Code, § 5256.1).

(b) Certification review hearings must be conducted in an impartial and informal manner in order to encourage free and open discussion by participants (Welf. & Inst. Code, § 5256.4(b)).

(c) At the certification review hearing, the evidence and support of the certification decision must be presented by a person designated by the director of the facility. (Welf. & Inst. Code § 5256.2).

(d) Certification review hearings will be scheduled on Tuesdays and Fridays at the facility in order to comply with Welfare and

Institutions Code section 5256.

(e) At the certification review hearing, the person certified must have the right to the assistance of an attorney or advocate. Further, the person certified must have the right to present evidence on his or her own behalf and to question persons presenting evidence in support of the certification decision. Other persons will be admitted to the hearing at the discretion of the judge or mental health hearing officer by standing order of the court (Welf. & Inst. Code, § 5256.4 (a)(1)(2)(3)).

(f) Reasonable attempts must be made by the mental health facility to notify family members, or any other person designated by the person certified, of the time and place of the certification review hearing, unless the person certified requests that this information not be provided. The person certified must be advised by the facility that is treating the person certified that he or she has the right to request that this information not be provided (Welf. & Inst. Code, § 5256.4(c)).

(g) Certification review hearings are not bound by rules of procedure or evidence applicable to judicial proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled must be admitted at the hearing and considered by the mental health hearing officer (Welf. & Inst. Code, § 5256.4(b)(d)).

(h) As soon after hearing as practicable, an attorney or patients' rights advocate must meet with the person certified to discuss the commitment process and to assist the person in preparing for the certification review hearing, or to answer questions or otherwise assist the person as is appropriate (Welf. & Inst. Code, § 5255).

(i) The person certified must have the right to make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision (Welf. & Inst. Code, § 5256.4(a)(4)).

(j) A certification review hearing will not be held where a writ of habeas corpus hearing has been requested (Welf. & Inst. Code, §§ 5254 and 5256).

(k) The person certified must be given oral notification of the decision at the conclusion of the certification review hearing by the mental health hearing officer. As soon thereafter as is practicable, copies of the decision must be provided to the attorney or patient rights advocate for the person certified, and to the director of the facility. The decision must be written and must include a statement of the evidence relied upon and the reasons for the decision. (See Exhibit 2, a mandatory court form entitled "Application for 72-Hour Detention;" Exhibit 3, a mandatory court form entitled "Notification of Certification Intensive Treatment." (Revised 01/01/07); (Revised 01/01/09)

1041 Certification Review Hearing Finding Contested by writ of habeas corpus

Contesting the mental health hearing officer's certification review hearing findings or physician findings under Welfare and Institutions Code sections 5250 or 5270.15 must be performed using the Judicial Council Form for writ of habeas corpus. (See Exhibit 1, a mandatory court form entitled "Petition for a Writ of Habeas Corpus.") The clerk will assign a case number, open an LPS file, and notify all persons entitled to notice of the hearing. (11/08/01)

Hearings will be conducted within two court days of the filing of the writ at the Tulare County Superior Court, Visalia Division, as stated in The Superior Court of Tulare County, Local Rules, rule 1034.

LPS DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTI-PSYCHOTIC MEDICATION (RIESE HEARING)

1042 Scope and Purpose

The following procedures are intended to implement the requirements of Riese v. St.Mary's Hospital (1987) 209 Cal.App.3d 1303, and Welfare and Institutions Code sections 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and who are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold); 5250 (14-day hold); 5260; 5270.15 (30-day hold); 5350; or 5353 et seq. (temporary conservatorship). In those cases in which a temporary conservator has been given authority to consent to medication, a review of that grant of authority may be made under these procedures or through a writ of habeas corpus.

(11/08/01)

1043 Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of anti-psychotic medication, and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent.

(11/08/01)

1044 Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by anti-psychotic medication, the treating physician must complete, sign, and date the "Petition of Treating Physician Regarding Capacity to Consent or Refuse Anti-psychotic Medication." The petition must include a section called "Treating Physician's Declaration Regarding Capacity to Consent to or Refuse Anti-psychotic Medication." These forms must be delivered to, or faxed to, the court clerk assigned to mental health matters in order to calendar a hearing. A patient may waive his or her right to counsel. The hearing officer will take a written waiver. (See Exhibit 5, a mandatory court form entitled "Waiver of Physician's Declaration for Representation at Medication Capacity Hearing.")

(01/01/07)

1045 Calendaring Hearings

It is assumed that time is of the essence in each Riese hearing. The physician or treating facility must deliver or fax the forms to the court clerk assigned to mental health matters in order to calendar a hearing. The clerk will calendar all hearings upon receipt of the requisite forms. Whenever possible, the hearing will be set within two court days. Notice is to be given to the approved hearing officer by the clerk. The physician or treating facility must notify counsel for the facility of the need for an interpreter when one is needed at the hearing (Riese v. St. Mary's Hospital and Medical Center (1987) 209 Cal. App. 3d 1303).

(11/08/01)

1046 Interpreter Services

All hearings in which interpreters are required must be conducted through court certified interpreters and arranged by the facility unless not available, in which case the court or hearing officer may use a competent interpreter.

(11/08/01)

1047 Attorney Duties

The patient's attorney, or patient's rights advocate (if a waiver is obtained), must meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed anti-psychotic medication. If the patient consents to the administration of anti-psychotic medication prior to the hearing, it will be the responsibility of the patient's attorney, or the patient's rights advocate, to notify the mental health hearing officer promptly, so the hearing may be canceled and unnecessary travel and expense may be avoided.

(11/08/01)

1048 Patient Representation

Patients will be represented by the public defender, or the patient's rights advocate, unless private counsel is retained by the patient.

(11/08/01)

1049 Treating Physician/Facility Counsel

The physician, or counsel for the facility, must present the petition and declaration as well as any oral or documentary evidence at the time of the hearing.

(11/08/01)

1050 Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality. Whenever possible, the hearings will be held at the facility where the patient is located. In any event, the hearing will be held as close to that facility as is practicable under the circumstances.

(11/08/01)

1051 Burden

The burden must be on the physician or treating facility to establish by clear and convincing evidence that the patient is incapable of giving or withholding informed consent to the administration of anti-psychotic medication (Riese v. St. Mary's Hospital and Medical Center (1987) 209 Cal. App. 3d 1303).

(11/08/01)

1052 Determination of Capacity

In determining the patient's capacity to give or withhold informed consent, the hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication, and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought (Welf. & Inst. Code, § 5326.2) and otherwise participate in the treatment decision by means of rational thought processes. Documentation by the hearing officer will be made on the mandatory court form entitled "Medication Capacity Hearing Record" (Exhibit 4).

Documentation by the court will be made on the mandatory court form entitled "Orders After Hearing" (Exhibit 1-B).

(11/08/01)

1053 Patient Presence

The patient must have the right to be present at the hearing, and through counsel (or the patient's rights advocate), to present evidence and to cross examine witnesses at the hearing. However, the patient may choose not to attend the hearing.

(11/08/01)

1054 Access to Records

The hearing officer must have access to, and may consider, the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent.

(11/08/01)

1055 Continuance of Hearings

Upon a showing of good cause and at the discretion of the hearing officer, a hearing may be continued pursuant to Welfare and Institutions Code section 5334(a).

(11/08/01)

1056 Determination

At the conclusion of the hearing, the mental health hearing officer will make a legal determination whether the patient is capable of giving or withholding informed consent to the administration of anti-psychotic medication. A copy of the decision by the mental health hearing officer must be filed with the court clerk assigned to mental health matters on the mandatory court form entitled "Medication Capacity Hearing Record" (Exhibit 4).

(11/08/01)

1057 Confidentiality

The proceedings under these rules, and all records of these proceedings, will be confidential as provided in Welfare and Institutions Code section 5328.

(11/08/01)

1058 Riese Medication Capacity Appeals

Appeals of Riese hearings must be filed in superior court using the mandatory court forms entitled "Appeal of Capacity Decision—Patient," or "Appeal of Capacity Decision—Physician." (See Exhibits 6 and 7.) The clerk will assign a case number, open an LPS file, and notify all persons entitled to notice of the hearing.

Hearings will be conducted within two days of the filing of the appeal.

- Petitions filed on Mondays and Tuesdays will be heard on Wednesdays.
- Petitions filed on Wednesdays and Thursdays will be heard on Fridays.
- Petitions filed on Fridays will be heard on Mondays.

(11/08/01)

1059 Compensation of Fiduciaries and Attorneys

Other than statutory fees and commissions in decedent estate proceedings, the Probate Code provides generally that fees, commissions, and compensation to fiduciaries and their attorney must be "just and reasonable" in amount. The court will make a determination of what is just and reasonable based on the information supplied to the court in the petition requesting allowance of fees or commissions. The petition must be properly captioned, including a reference to the fee request, and it must include an explanation of how the fees or commissions were calculated. Information must be provided in detailed, but brief and organized form, including (1) date(s) of service, (2) nature of service rendered, (3) hours, and fractions of hours, of service rendered, (4) identity of person rendering services, and (5) the hourly rate charged for each person rendering services. Copies of a computerized billing statement will not fulfill the requirements hereunder unless such statement contains all such information and is legible.

(a) Compliance

All requests for fees and commissions in decedents' estates and in guardianship, conservatorship, and trust proceedings must be submitted in strict compliance with these rules. Requests that do not comply will be automatically continued one time for a minimum period of two weeks to permit the filing of supplemental or amended pleadings.

Caution: Oral testimony or representations will not be accepted on uncontested fee matters, except as may be allowed by the court upon showing of good cause.

(b) Payment of Fees by Assignment of Property

Petitions for assignment of property to fiduciaries or their attorneys in place of fees or commissions will not ordinarily be approved.

(c) Paralegal Compensation

Compensation for services performed by a paralegal under an attorney's direction and supervision may be allowed by the court in appropriate cases. No paralegal compensation will be paid from a decedent's guardianship or conservatorship estate without prior court approval. Any petition requesting allowance of paralegal compensation must set forth the hours expended and nature of services performed, and the paralegal's hourly rate as well as the name and brief summary of the qualifications of the paralegal.

(d) Prior Court Approval Required for all Fiduciary and Attorney Compensation

There must be no payment of any commissions or attorney fees from decedent's estate, guardianships, or conservatorships in advance of an authorizing court order. The probate court may, in its discretion, impose sanctions, order return of the fee or commission, or surcharge representatives or attorneys interest from the date of payment to the date of the order authorizing the same at the rate prescribed by Code of Civil Procedure section 685.010 for judgments, unless the written consents of all residuary devisees of a decedent's estate are filed with the court, and the court finds the amounts paid are reasonable and proper. Fees of trustees and their attorneys must be paid only after the services have been performed to which they relate.

(e) Periodic Payments

Periodic payment of fees or commissions may be made with prior court authority pursuant to the rules set forth in Probate Code sections 2640 to 2642.

(f) Statutory Fees and Commissions in Decedents' Estates

Allowances on account of statutory fees or commissions will be granted by the court only in proportion to the work actually completed. Usually, the last 25 per cent of statutory fees or commissions will not be allowed before the approval of the final accounting and the decree of distribution, unless it can be shown that payment of a greater amount will benefit the estate. All or substantially all of the statutory fee or commission may be allowed when it is shown that all services have been performed, but

that the estate has not closed because of reasons beyond the control of the petitioning party.

(1) Waiver of Accounting

If an accounting is waived, the statutory fee will ordinarily be based only upon the stated inventory, with no fees allowed on gains on sales or on receipts by the estate.

(2) Compensation for Ordinary Duties of Personal Representative

The personal representative may hire an attorney or other agent to perform duties of the representative, and separately compensate the attorney or agent from his or her own funds. If such contract is entered into with an attorney, the attorney must comply with rule 5-101 of the California Rules of Professional Conduct and enter into a written agreement setting forth the basis of compensation and the consent of the representative. The agreement will be subject to court approval, and must be filed with the court at the time the first petition for fees is filed.

(g) Fees for Extraordinary Services in Decedents' Estates

Extraordinary fees may be allowed to the personal representative or attorney for their services relating to such matters as sales, leases, borrowing, litigation (including contested probate matters), tax matters (including preparation of returns, audits, and tax litigation), operating a business, heirship proceedings, and the performance of any other act resulting in extraordinary benefit to the estate requiring an extraordinary expenditure of time or other special services as may be necessary for the personal representative or attorney to perform. The court will consider the following facts, among others, in exercising its discretion to grant fees for extraordinary services:

(1) Time Devoted to the Matter

The request for fees must indicate the time devoted to a matter, broken down between attorney and paralegal, indicating the hourly rate customarily charged for such services. The court must be provided with sufficient information in order to analyze the reasonableness of the rate and the amount of time devoted to the matter; however, the time and rate will not be the sole criteria, or considered as a minimum or maximum value, in determining extraordinary fees.

(2) Benefits Inured to the Estate

It is recognized that the representative or his or her attorney may occasionally be under a duty to pursue certain matters which do not enjoy a successful conclusion. Such services may nevertheless be compensable, but a successful conclusion is relevant.

(3) Amount of Money or Value of Property Involved in the Transaction

This is relevant to the degree of responsibility assumed and the care that will be given to the matter.

(4) Nature and Complexity

The court will consider whether the matter was routine or involved a unique matter of substantial legal or practical difficulty. The court will also consider whether the character of the services rendered (legal versus ministerial; special skills required), as well as the knowledge and experience of the personal representative or attorney. For example, if a real property sale involves dealing with numerous buyers, evaluation of exchanges, clearing title, or exposure to potential litigation, these facts should be listed in detail. Similarly, if the preparation of a Federal Estate Tax Return involves such other matters as elections under sections 303, 2032A, 6166, or 2056 of the Federal Estate and Gift Tax Code, each service should be separately described.

(5) Duration of the Probate Administration

Although it is the policy of the law to close an estate as promptly as possible, it occasionally is necessary for estates to remain open for lengthy periods of time. In that event, delay in compensation and the time value of money is relevant.

(6) Consideration of Statutory Fee

In requests for extraordinary fees, the amount of the statutory fee and the time required to administer all matters pertaining to the estate may, in certain cases, be considered as a factor in determining reasonable compensation for extraordinary services, if any. In all cases where statutory fees are considered, the normal services required to close an estate, subsequent to the date on which extraordinary fees or commissions are requested, will be considered.

(7) Copies of Petition to Beneficiaries

Copies of petitions for allowance of fees for extraordinary services and commissions in decedents' estates in excess of 25 percent of statutory fees must be mailed to all persons entitled to receive notice of the hearing on the petition (except beneficiaries of specific gifts).

(h) Compensation of Conservators, Guardians, and Their Legal Counsel

No compensation for any conservator or guardian, or their legal counsel, will be paid without court approval. Requests for allowance of attorney fees in conservatorships and guardianships must comply with the requirements set forth above in subsection (g) of this rule and will be similarly considered by the court.

(1) Conservator and Guardian Fees

Any application for fees must be accompanied by a complete statement of facts upon which such application is based. This application must specify the amount requested, not merely "reasonable fees." The court will consider (1) relative value and gross income of the estate, (2) benefit or loss due to administration by the fiduciary, (3) any skill or experience required of the fiduciary, (4) the quality and extent of services performed by the fiduciary for the benefit of the conservatee or ward, (5) the amount of responsibility assumed and exercised, (6) time spent by the fiduciary for services benefiting conservatee or ward, or estate, (7) customary hourly charges for similar services of other private or professional fiduciaries, (8) character of work performed (i.e., whether routine or involving special skill or judgment), and (9) in the case of a final accounting, a reasonable estimate of work and time to complete estate affairs and distribution. Any application for fees made by the public guardian should be based upon the standing order for fees in effect at the time of the application.

(2) Attorney Representing Conservatee or Ward

Upon written, verified application of the attorney at the conclusion of the hearing, compensation may be ordered to an attorney representing the conservatee or ward, unless the court requires a noticed petition.

(3) Conservatorship/Guardianship Review of Legal Fees

If only attorney fees are requested, the petition must show that the conservator or guardian has been notified, and must reflect the fiduciary's approval or disapproval of the requested fees.

(07/01/97)

1060 Bonds

In estates where a bond is not waived, the court encourages the use of blocked accounts with bank or savings association depositories for liquid assets. Normally in conservatorships and guardianships, only liquid assets necessary to meet the anticipated day-to-day expenses of the conservatee or ward and estate should be available to the conservator or guardian.

(a) Waiver of Bond in Conservatorships and Guardianships

The court will not usually waive a bond for conservatorships or guardianships except (1) where the conservator is the spouse of conservatee, all or most of the property is shown to be community property, and the community property may be excluded from estate administration, (2) in small estates under Probate Code section 2628, or (3) where the conservatee is present in court, is a competent person (as affirmatively shown by a physician's declaration), and gives informed consent to the bond waiver. In no event will a bond be waived in cases in which the proposed conservator is not the petitioner on the petition to establish the conservatorship.

(b) Reducing Bond Through Use of Depository

(1) Before Issuance of Letters

Unless otherwise ordered by the court, when assets are to be placed in a blocked account or depository, the receipt and agreement of the depository required by Probate Code sections 2328, 8401, 8483, and 9700 through 9705 must be filed prior to the issuance of letters. Proposed orders pertaining to blocked accounts at depositories should contain appropriate language to allow deposits in conformance with the foregoing code sections and Financial Code sections 764, 765, and 775.

(2) After Appointment

Bonds may be reduced at any time after appointment by an ex parte petition and order reducing bond, together with a receipt of a depository showing that assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate after excluding those held by depository, and it must appear that the reduced bond adequately

covers the amount to be protected.

(3) Direct Transmittal to Depository

If the assets to be deposited are in the possession of a bank, savings and loan association, or trust company other than the named depository, the order should direct the entity in possession to deliver such assets directly to the named depository, and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary (Fin. Code, §§ 764 and 765).

(4) Withdrawals or Releases from Depository

An order authorizing release of assets from a blocked account may be had ex parte. The petition should set forth the approximate value of the assets on hand, the approximate value of all assets under impound, the amount of the existing bond, and the purpose for which the withdrawal is being made. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the court to determine the amount of the increase. The order may provide for funds to be paid directly to a taxing authority, or beneficiary, or other person entitled thereto.

(c) Bond Modification

It is the duty of the fiduciary upon becoming aware that the bond is insufficient (e.g., on filing of an inventory or submitting an accounting), to apply immediately for an order increasing the bond. Such applications may be made ex parte. When the bond of a fiduciary must be increased, the court favors filing an additional bond rather than a substitute bond. When the fiduciary's bond must be decreased, the court favors using an order decreasing the liability on the existing bond, rather than a substitute bond.

(07/01/97)

1061 Sales of Real Property

When there is a successful overbid in open court on a sale of real property, counsel must complete, and the successful bidder must sign, an "Increased Bid in Open Court" form and file same before an order will be signed. (The form in Appendix 7 may be photocopied and used.)

(a) No Commission; Special Situations

Except upon showing of good cause, no real estate commission will be allowed or credited to, or for the benefit of, a purchaser who is a licensed real estate broker or salesperson in any probate sale of real property, directly or indirectly. No real estate commission will be allowed or credited to, or for the benefit of, a personal representative or fiduciary in the subject probate proceedings who is a licensed real estate broker or salesperson in any probate sale of real property in the proceeding, directly or indirectly. The petition for confirmation of sale must state any known claim of the personal representative, fiduciary, or purchaser to all or any part of the proposed real estate commission, directly or indirectly.

(b) Disputes Between Agents or Brokers Regarding Compensation

Should a dispute arise between agents or brokers seeking compensation upon the sale of real property under Probate Code section 10161 and/or sections 10162.5 through 10166, there will be a separate evidentiary hearing to resolve the dispute. Before the hearing, the agents or brokers, or their respective attorneys, must meet and confer (face-to-face) in a reasonable and good faith attempt to informally resolve the dispute. The court must be notified of the results of such attempt at least two court days before the hearing. The sale of real property may be confirmed at the hearing on the sale and need not be delayed by virtue of any dispute for compensation by or between real estate agents or brokers.

(07/01/97)

1062 Claims of Personal Representative and Attorneys of Record

For any creditor's claim brought by the personal representative or his/her attorney of record, noticed petition for approval must be filed and served on all persons whose interest might be affected by approval of the creditor's claim at least 15 days before the hearing, except as provided below. The creditor's claim must be complete with approval signed by all personal representatives in the proceeding. The petition must contain a factual statement relating to the solvency of the estate, including a summary of the nature and the amount of assets and all known indebtedness and taxes of the estate, whether absolute or contingent.

The requirement of a noticed hearing and petition will not be required when (1) the claim is for reimbursement of funeral and last illness expense not exceeding $5,000.00, and proof of payment is attached to the claim, (2) the claim, together with all other claims of that personal representative or attorney (except for funeral and last illness expenses) is less than $1,000.00, (3) a written

approval signed by all persons whose interest might be affected by the approval is attached to the claim, (4) the personal representative has complied with the provisions of the Independent Administration of Estates Act with respect to the proposed payment of said claim, or (5) a claim is for a definite amount and is based upon a prior court order, which is attached to the creditor's claim.

(07/01/97)

1063 Adoption Proceedings

(a) All adoption hearings will be set by the calendar clerk of the court located in Room 201 of the Visalia Superior Court, County of Tulare. No hearings will be set unless there has been previously filed with the court all consents required by Family Code section 8604. No consents are required if (1) the parent is deceased; (2) the parental rights of the parent have terminated by a final court decision terminating parental rights; (3) there is a judicial determination that consent is not required pursuant to Family Code section 7662; or (4) there is a judicial determination that consent is not required pursuant to Family Code section 8606.

If it is alleged by the petitioner that consent of a parent is not required pursuant to Family Code sections 7662 or 8604, a judicial determination that consent is not required will be made at a judicial proceeding held prior to the adoption hearing. That judicial determination will be in the court's file prior to the adoption hearing. No judicial determination will be made that consent is not required pursuant to Family Code sections 7662 or 8604 without strict compliance with the notice requirements of Family Code sections 7662 or 8604(b). In cases falling within Family Code section 7662, the court will not issue an order dispensing with notice under Family Code section 7666(b) without a factual showing made by declaration under penalty of perjury that good faith attempts have been made to locate and give notice to the person to be noticed and that despite such efforts the petitioner has been unable to locate such person to give notice.

If it is judicially determined that a petition to terminate parental rights must be completed and granted before a petition for adoption can be granted, there must be an investigation and a report completed for the court. In the case of stepparent adoptions, the investigation and report are prepared by Family Court Services, room 203. In all other cases, the investigation and report are completed by the Adoptions Division of the Tulare County Health and Human Services Agency.

Forms that may be utilized to petition the court to determine necessity of consent in stepparent adoptions are available in the office of the clerk of the court, Room 201 of the Visalia Courthouse. (01/01/03)

(b) Except in the case of stepparent adoptions, no adoption will be set for hearing unless there has been previously filed with the court an accounting report as required by Family Code section 8610.

(c) In cases in which the child(ren) to be adopted is twelve years of age or older, no adoption will be set for hearing unless there is lodged with the clerk a proposed consent form to be signed by the child in the court's presence.

(d) The acknowledgment in writing that must be executed by the adopting parent or parents pursuant to Family Code section 8612(b) must be lodged with the clerk prior to the setting of any adoption hearing.

(e) The proposed adoption decree must be lodged with the clerk prior to the granting of a hearing date.

(01/01/07)

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Tuolumne County
Probate Rules

Effective January 1, 2007

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5.0 PROBATE RULES

5.01 LOCAL GENERAL AND CIVIL COURT RULES APPLICABLE TO PROBATE MATTERS

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

(effective 7/1/98, amended 1/1/01)

5.02 APPEARANCES

a. Appearances are required on all petitions for appointment of conservators / guardians, confirmation of sale of real or personal property and any petition which objections have been filed.

b. If counsel does not appear on any calendared matter, cases which are incomplete or questionable will be continued one (1) to two (2) weeks or may be dropped off calendar, at the discretion of the court.

(effective 7/1/98, amended 1/1/01)

5.03 CORRECTION OF AN ORDER

If an order has been filed it can be amended only by court order. Such an order may be obtained by filing a verified petition, setting forth the basis for the correction and requesting the judge to sign the amended order.

(effective 7/1/98, amended 1/1/01)

5.04 PETITIONS

a. All petitions must be filed with the clerk's office at least fifteen (15) calendar days prior to the hearing, except for matters filed under Probate Code section 17200 et seq., which shall be thirty (30) calendar days.

b. Petitions for Compromise of Minor's Claim under Probate Code section 3500 and Code of Civil Procedure section 372 shall

be filed with the court at least seven (7) days before the scheduled hearing.

(effective 7/1/98, amended 1/1/01)

5.05 PUBLICATION

a. Publication. The clerk DOES NOT handle the mailing and publication of notices. Notices must be prepared and submitted at the time of filing the petition.

b. Defective Notice.

1. Publication correct but Mailing defective. The hearing normally will be continued to allow enough time for the mailing of the required amended notice. Republication is not required.

2. Mailing correct but Publication defective. The matter must be taken off calendar and a new notice must be given by publication and mailing.

(effective 7/1/98, amended 1/1/01)

5.06 ORDERS

a. Proposed Orders. Except in the case of confirmation of sales, contested matters, and orders requiring information from a governmental agency, counsel shall submit the order not later than the third court day prior to the hearing date.

b. Form of Orders. All orders in probate matters must be complete. The order shall be drawn so that its substance may be determined without having to refer to the petition on which it is based.

(effective 7/1/98, amended 1/1/01)

5.07 BLOCKED ACCOUNTS

A petition and order to place assets in a blocked account shall state that "no withdrawal or withdrawals shall be made without prior court order". A receipt acknowledged by the financial institution indicating the deposit of cash or securities into a blocked account, and in addition, that the financial institution agrees that, no withdrawal or withdrawals shall be made without prior court order, must be filed with the clerk's office within ten (10) calendar days after the date of deposit. Upon a showing of good cause, a petition for withdrawal of funds or securities may be submitted ex parte.

(effective 7/1/98, amended 1/1/01)

5.08 LETTERS OF SPECIAL ADMINISTRATION

Petitions for Letters of Special Administration ordinarily will not be granted on less than 24 hours notice to the surviving spouse, the person nominated as executor and any other person the court determines to be entitled to notice. In making the appointment, preference is given to the person entitled to letters, but if it appears that a contest exists, the court may appoint a neutral person or corporation as special administrator.

(effective 7/1/98, amended 1/1/01)

5.09 DECLINATION OF EXECUTOR

If a nominated executor declines to act, a signed declination must be filed prior to the hearing date.

(effective 7/1/98, amended 1/1/01)

5.10 CONSENT OF REPRESENTATIVE(S)

Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal representative must be filed for each proposed personal representative.

(effective 7/1/98, amended 1/1/01)

5.11 REMOVAL OF PERSONAL REPRESENTATIVE

After a petition for removal has been filed, the attorney for the petitioner shall present to the court an order directing the clerk to

issue a citation. The attorney must prepare the citation, requiring the representative to appear personally and to show cause why the petition for removal should not be granted and letter revoked.

(effective 7/1/98, amended 1/1/01)

5.12 PETITION FOR PROBATE

When a Petition for Probate of a Will or Codicil is filed, the original of the document being offered for probate shall be filed prior to or concurrently with the petition. If the Will or any other part thereof is handwritten, an exact typewritten copy of the handwritten portion must also accompany the petition. If the Will is in a foreign language, a translation by an expert shall be submitted at the time of filing the Petition for Probate. A declaration as to the expertise of the translator shall accompany the translation.

(effective 7/1/98, amended 1/1/01)

5.13 NOTICES

a. In a Petition for Probate of a Will, all persons and organizations named in the Will or Codicils shall be listed in Attachment 8 and noticed.

b. The trustee(s) of a living trust who is a beneficiary of a Will shall be listed as a devisee and noticed.

c. If a named devisee predeceased the decedent, that fact must be stated. In cases where the devisee died after the decedent, the date of death must be stated and notice mailed in care of his or her personal representative if one has been appointed or alternatively, to an appropriate representative.

d. A declaration specifying efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required, pursuant to Probate Code Section 12405.

e. If the decedent had no known heirs, or heirs of a predeceased spouse pursuant to Probate Code section 6402.5, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate any heirs.

f. A petition for an appointment of a successor personal representative does not require a Notice of Petition to Administer Estate. Notice shall be given in the manner provided in Probate Code section 8100 et seq. Publication is not required.

g. Notice to minors, where their names and addresses are known to petitioner, shall be addressed individually to the minor and mailed to the minor's residence. A copy of the notice shall be sent to the minor's parent(s) or guardian.

(effective 7/1/98, amended 1/1/01)

5.14 INVENTORY AND APPRAISEMENT

The Inventory and Appraisement should be filed within the time required under Probate Code sections 8800 et seq. An additional copy must be submitted when real property is included for the clerk to transmit to the Assessor's Office.

(effective 7/1/98, amended 1/1/01)

5.15 CREDITOR'S CLAIM

Creditor's shall file their claims with the Clerk's Office and mail a copy to the personal representative. The disposition of all such claims must be reported to the court on the Judicial Council form "Allowance of Rejection of Creditor's Claim", prior to any distribution. This also applies to fiduciaries acting under independent administration.

(effective 7/1/98, amended 1/1/01)

5.16 SALE OF REAL PROPERTY

a. Notice must be given to the proposed purchaser or his agent of the time and place of hearing. An appearance is required.

b. A copy of the contract of sale shall be attached to the petition for confirmation of sale.

c. Petitions for confirmation of sales of real property shall set forth the amount of bond in force at the time of the sale and the amount of property in the estate which should be covered by a bond. If no additional bond is required or if bond is waived, that fact should be alleged in the petition.

d. Where the estate owns only a fractional interest in the real property, the petition must state whether the sale is conditioned upon closing of a sale of the unowned fraction. The other fractional owner(s) shall be noticed of the hearing. If the whole parcel is being sold, only the fractional interest and its value shall be listed on the petition and used to calculate the overbid.

e. Overbids. All overbids in open court must be in writing before the judge will accept the offer and grant the sale.

(effective 7/1/98, amended 1/1/01)

5.17 PETITION FOR INSTRUCTIONS

A petition for instructions is only appropriate when no other or different procedure is provided by statute. The petition should set forth the requested instruction and a description of the reasons why the instruction is necessary, or set forth alternatives and the anticipated results of taking action under each listed alternative. All interested parties shall be noticed. A proposed order shall be submitted at least ten (10) calendar days prior to the hearing.

(effective 7/1/98, amended 1/1/01)

5.18 PETITIONS FOR DISTRIBUTION

a. Ex Parte Preliminary Distribution Petitions. Except upon the written consent of all beneficiaries or all heirs, ex parte petitions for distribution must set forth the justification for such urgent action.

b. Description of Assets. Property to be distributed shall be listed and described in detail; description by reference to the Will or inventory is not acceptable. This applies to preliminary and final distribution with or without an accounting.

c. Specifically Bequeathed Property. If specifically bequeathed personal properly is not in existence at the time of final distribution, the petition shall set forth a full explanation concerning that fact.

d. Description of Distributions. When the inventory value of the estate exceeds four hundred thousand dollars ($400,000), the names and present addresses of all persons entitled to receive property of the estate must appear in the petition for final distribution.

e. Compliance with Probate Code Sections 9202 and 215. The first report of administration of a decedent's estate shall contain allegations either that notice of decedent's death has been provided to the Director of Health Services required by Probate Code sections 9202 and 215 or that no such notice is required.

f. Specifically Devised Real Property. Unless waived, a separate accounting for specially devised real property is required. Such accounting shall set forth the income and expense allocable to such real property (e.g., rents, taxes maintenance, repairs, insurance). For apportionment of income and expenses see Probate Code sections 12002(c)(d).

g. Distribution to Intestate Heirs. The relationship of heirs who take by intestacy should be sufficiently described in the petition for distribution to permit the court to determine whether the laws of intestate succession have been properly applied. If an heir takes by right of representation, the petition must indicate parentage and approximate date of the parent's death.

h. Distribution to Fiduciary. Where assets are to be distributed to a trustee, conservator, guardian or other personal representative, an account shall be filed, unless waived. If distribution is to a trustee, there shall be filed with the petition for distribution either acknowledged statement by the trustee accepting the property under the terms of the trust or a petition by the personal representative for the appointment and designation of a substitute trustee.

i. Distribution by Agreement or Assignment. Where assets are to be distributed unequally in kind by agreement of heirs or beneficiaries an executed and acknowledged copy of the agreement shall be attached to and incorporated into the petition for distribution and the terms of the agreement set out in the order of distribution is to be made pursuant to Assignment of Interest of Heir or Beneficiary. The assignment shall set forth the details of consideration and shall be executed, acknowledged and filed with the petition for distribution.

j. Terms of Testamentary Trust. The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

k. Distribution to Minor or Incompetent. On distribution to a minor or incompetent, the petition for distribution shall set forth either facts showing compliance with Probate Code sections 3400 et seq, or there shall be filed with the petition certified copies of letters of conservatorship or guardianship.

l. Interest on General Pecuniary Legacies. The court will strictly enforce Probate Code section 12003 and will order payment of interest at the statutory rate on all general pecuniary legacies not paid within one year from date of decedent's death unless payment of interest is waived in the Will. Attorneys are responsible for determining the correct rate and computing the amount of interest.

m. Payment of Taxes. The petition for final distribution must address the question of the source of the payment of the federal estate tax, if any. If prorated, the final report must show the computation, and the order for final distribution must include the proration.

n. Actions Under Independent Administration of Estates Act. If a personal , representative has proceeded under the Independent Administration of Estates Act, the final report, whether or not accompanied by an accounting, shall contain a list of all independent act performed and an allegation that all required Notices of Proposed Action were duly served and that no objections were made.

o. Allegation on Creditor's Claim. It is not sufficient simply to allege that all creditor's claims have been paid. Rather, the claims presented must be listed showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection of claim shall be stated. The required allegation must appear in the final report, even though it may have appeared in whole or in part in prior reports.

p. Allegations re Character of Assets. In all cases where the character of the property may affect distribution, whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property and the identity thereof.

q. Waiver of Accounting on Final Distribution. The waiver makes a listing of the details of receipts and disbursements unnecessary. All other matters (the reporting of creditors claims, sales and purchases, changes in the form of assets or other transactions, etc.) must be presented in the report.

r. Closing Expenses. When closing expenses are requested, the petition and order must set forth the distribution of any unused portion thereof.

(effective 7/1/98, amended 1/1/01)

5.19 FINAL DISCHARGE

The "order" portion of the Declaration and Order for Final Discharge shall be completed in full except for the date and name of the judge.

(effective 7/1/98, amended 1/1/01)

5.20 STATUTORY COMMISSIONS AND FEES IN PROBATE ESTATES

a. Court authorization is required for advance payment of any compensation to a fiduciary or attorney for any such fiduciary.

b. Unless statutory compensation is waived, calculation of the statutory compensation and any prior payments of statutory compensation shall be set forth in the petition for compensation.

c. Where the accounting is waived, the basis of the statutory compensation shall be the inventory value of the estate plus receipts plus or minus gains or losses on sales. Such gains of losses shall be reflected in the report of the personal representative. If receipts are to be included in the computation they must be set forth in detail.

d. The court may deduct from the personal representative's statutory commissions any sums paid from estate funds for the performance of the representative's ordinary duties.

e. Where an attorney is the personal representative and a member of a law firm, attorney's fees will not be allowed unless a declaration is executed and filed stating that the representative will not share in the attorney's fees to be received by the firm.

(effective 7/1/98, amended 1/1/01)

5.21 EXTRAORDINARY SERVICES

In evaluating the justification for an award of fees for extraordinary services, the court will take into consideration the statutory fee and determine whether it constitutes adequate compensation for all the services rendered by the attorney or representative.

a. Ordinarily, compensation for extraordinary services will not be allowed or paid before the final accounting has been approved by the court.

b. Extraordinary services will not be considered unless the caption, prayer of the petition and notice to distributees contain a reference to the application for extraordinary compensation.

c. Except as stated below for routine real property sales and federal estate tax work, applications for fees or commissions for extraordinary services shall include a detailed explanation for the extraordinary services. It shall be separately stated in a declaration under penalty of perjury executed by the person rendering the services. Such application shall specify the amount requested for each item of service, not merely a "reasonable amount". Time sheets shall not be submitted.

d. In determining the compensation of an attorney for extraordinary services rendered with respect to real property sales, the court will consider the amount of time involved, whether or not a real estate broker was employed, the involvement of the attorney in negotiations, the nature of the other services rendered (e.g., drafting of the sales agreement and its complexity, preparation of deeds and other documents) and other similar information. The personal representative may also request compensation for extraordinary services in regard to sales of real property.

e. Preparation of Federal Estate Tax Return. In determining the compensation of a personal representative or an attorney for the preparation of a federal estate tax return, the court will ordinarily consider the hours spent, the intricacy or peculiar nature of any of the issues or computations involved, the extent of any audit, the value of the gross estate, the amount of tax and other similar information.

(effective 7/1/98, amended 1/1/01)

5.22 COSTS

Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items advanced by such party must be separately, stated and described.

(effective 1/1/01)

5.23 FILING FEE REFUND

When the estimated filing fee is more than the corrected filing fee, the personal representative shall make application to the court for refund, if the refund is for more than ten dollars, by way of an ex parte application and order, to be submitted with the petition for final distribution. The ex parte application shall reference the schedule for the graduated filing fee information in the petition for final distribution, but need not reiterate the schedule. The dollar amount of the filing fee paid, the correct filing fee, and the refund owed shall be specified in the application and order. An additional copy of the ex parte application and order shall be provided for the use of the court.

(effective 7/1/05)

5.24 PRE-GRANTED PROCEDURES

Matters appearing on the Probate Calendar (excepting sales) will be reviewed by the research attorney and may be "pre-granted" unless written objections are filed, oral objections are made in open court, or there are procedural defects or other circumstances that need to be resolved before the order can be granted.

a. To qualify for "pre-grant" status, a; supporting documents and a proposed order must be submitted to the clerk's office at least five (5) court days before the calendared hearing.

b. "Pre-granted" matters are generally available the two court days prior to the calendared hearing. The information as to status will be posted on the court's website: www.tuolumne.courts.ca.gov by 3:00 p.m.

(effective 1/1/07)

5.25 MATTERS REMOVED FROM PRE-GRANT STATUS

The list of pre-granted matters will be read at the beginning of the Probate calendar. If an objector or counsel for an objector to a pre-granted matter appears at the hearing, the Court will ordinarily remove the case from the pre-granted list and provide a continuance of two (2) weeks. The court may direct that written objections or an opposing petition be filed prior to the continued date.

a. If the attorney of record on the pre-granted matter is not present, the courtroom clerk ordinarily will advise of the continuance and the reason therefore.

(effective 1/1/07)

6.0 CONSERVATORSHIPS AND GUARDIANSHIPS

6.01 TEMPORARY CONSERVATORSHIPS AND GUARDIANSHIPS

a. The petition for appointment of a temporary conservator and guardian must be filed with or after the filing of a petition for a permanent conservator/guardian. The petition must state facts establishing the urgency requiring the appointment of the fiduciary (e.g., situation requiring immediate action to protect the health, welfare or the estate of the proposed conservatee/minor). Notice shall be given as set forth in Probate Code section 2250(c), unless the court for good cause otherwise orders. A temporary conservator/guardian will be appointed without notice only in emergency situations

b. If the attorney is informed that the petition for appointment of a permanent conservator will be contested, all known potential objectors must be given at least 24 hours notice of the time and place the petition for appointment of the temporary conservator will be presented.

c. Ordinarily the court will require a bond or a blocked account for temporary conservators/ guardians of the estate.

d. Good cause must be shown for special powers to be granted without a hearing. If special powers are sought, they must be specified in the petition and supported by factual allegations. In any case involving a special medically related power, a physician's declaration should be presented with the petition.

(effective 7/1/98, amended 1/1/01)

6.02 PETITIONS FOR APPOINTMENT OF CONSERVATOR/GUARDIANS

On all petitions for appointment of a conservator or guardian, an investigation shall be conducted pursuant to Probate Code sections 1826 or 1513. Notice of at least twenty-five (25) calendar days is required in order for Court investigations to be completed on all petitions for appointment. The Petitioner shall provide the form of order for appointment of the Court investigator at the time the petition is filed, and shall promptly notice the investigator of the appointment. The Petitioner is required to provide an additional copy of the petition, and any other required documents to the clerk, for the use of the Court appointed investigator.

(effective 1/1/01, amended 7/1/03)

6.03 INDEPENDENT POWERS

If independent powers under Probate Code sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers and reasons requiring the powers requested. Only those powers necessary and proper shall be granted.

(effective 7/1/98, amended 1/1/01)

6.04 LIMITED CONSERVATORSHIPS

a. If the proposed conservatee is a developmentally disabled person (Probate Code section 1420), a petition for limited conservatorship is mandatory. However, pursuant to Probate Code section 1828.5(d), upon investigation, the court may find that a general conservatorship (as opposed to a limited conservatorship) is appropriate.

b. Appointment of counsel for a proposed limited conservatee is mandatory. An ex parte application and order for appointment of counsel may be submitted prior to the hearing to avoid continuance or delay. If a Public Defender is requested, facts in the application must assert the proposed conservatee's financial inability to obtain private representation.

(effective 7/1/98, amended 1/1/01)

6.05 NOTICE OF RESIDENCE

In every conservatorship a "Notice of Conservatee's Residence" must be filed with the initial petition for appointment, with all accounting (including the final accounting) and at any time there is a change in residence of the conservatee. The Clerk will provide the forms for this notice.

(effective 7/1/98, amended 1/1/01)

6.06 CONSERVATEE'S MENTAL CAPACITY

A proposed conservatee who has made a nomination and/or waived the requirement of a bond, must prove to the court that he or she has or had the capacity to understand the nature and signification of such actions at the time of making the nomination or waiver of bond. This may be done by oral representation at the hearing for appointment. A statement by counsel that the conservatee is present and does not object is not sufficient. This also applies where the proposed conservatee is the petitioner.

(effective 7/1/98, amended 1/1/01)

6.07 DECLARATION UNDER UCCJA

In any guardianship of the person of a minor, a declaration under the Uniform Child Custody Jurisdictional Act shall be filed with petition for appointment and at any time there is a change of address of the minor. A duplicate copy shall be included for the appropriate court investigation agency.

(effective 7/1/98, amended 1/l/01)

6.08 GUARDIANSHIP FUNDS FOR SUPPORT OF MINOR

In all cases where is it intended that guardianship funds be used for the ordinary expenses of supporting a minor and there is a parent living who has the obligation to support the minor, the guardian shall obtain court approval prior to the expenditure of funds for that purpose.

(effective 7/1/98, amended 1/1/01)

6.09 INVENTORY AND APPRAISEMENT

An inventory shall be filed in all cases where there is a conservatorship/guardianship of the estate, even in a case where relief from the requirements of filing accountings may be sought under Probate Code section 2628. When there are no assets in the hands of the fiduciary, the inventory shall so indicate.

(effective 7/1/98, amended 1/1/01)

6.10 REVIEW HEARING FOR GENERAL PLAN AND INVENTORY AND APPRAISEMENT

The Inventory and Appraisement is due ninety (90) days from the appointment of the conservator. A review hearing will be set at the time of the appointment to confirm that the document is on file. No appearance is required if the Inventory is on file prior to the review hearing unless the court notifies counsel or the conservator of a need to appear. Counsel may contact the Court to verify the receipt of these documents prior to the review date.

(effective 7/1/98, amended 1/1/01)

6.11 SEPARATE ACCOUNTING FOR SEVERAL MINORS

When a guardianship of the estate has been instituted for more than one minor, the interests of each minor must be separately stated in the inventory and separate accounting schedules must be presented so that the receipts, disbursements and assets pertaining to each minor's estate are readily ascertainable.

(effective 7/1/98, amended 1/1/01)

6.12 SUCCESSOR CONSERVATOR/GUARDIAN

a. The petition for a successor conservator/guardian shall be submitted on the same form approved by the Judicial Council for initial petitions.

b. Successor conservators/guardians of the estate shall file an accounting one (1) year after the successor's appointment date and thereafter at least biennially.

(effective 7/1/98, amended 1/1/01)

6.13 SALE OF CONSERVATEE'S PERSONAL RESIDENCE

To notify the court of an intention to sell a conservatee's personal residence pursuant to Probate Code 2540(b), counsel shall file an ex parte petition and order which fully complies with all requirements of that section.

(effective 7/1/98, amended 1/1/01)

6.14 REPORTS AND ACCOUNTS

A report and account shall be filed within sixty (60) days after the anniversary date.

(effective 7/1/98, amended 1/1/01)

6.15 WAIVING OF ACCOUNTS

a. Pursuant to the provisions of Probate Code section 2628, the court may waive the requirement of an accounting. A petition for waiver of accounting may be heard ex parte, subject to the court's review of the most current Court Investigator's report. The petition must assert that the conservatee or minor (over the age of 14) was informed in person or in writing of the conservator's request for the waiver of account, and that the conservatee either agreed to the waiver or did not respond. In Conservatorships, a Notice of Residence is also required.

b. If the conditions of Probate Code section 2628 are satisfied and the court approves the petition to dispense with the accounting, no further filings of accounts will be necessary until such time as the provisions of Probate Code Section 2628(b) are no longer applicable. This must be explicitly set forth in the order. The petitioner must, nevertheless, continue to keep accurate records in order to prepare any accounts that may be required under Probate Code section 2628, subdivision (c) and (d).

(effective 7/1/98, amended 1/1/01)

6.16 REMOVAL OF CONSERVATOR OR GUARDIAN

For removal of a fiduciary please refer to Rule 5.11.

(effective 7/1/98, amended 1/1/01)

6.17 TERMINATION OF CONSERVATORSHIP AND GUARDIANSHIP

a. Investigation Reports. When the conservatorship/guardianship is being terminated for reasons other than death or attaining the age of majority, a hearing must be set at least thirty (30) days in advance in order to allow time for an investigation report.

b. Notice. Notice must be gives to allow to a former minor or conservatee on the settlement of the final account. Notice also must be given to the representative of a deceased ward or conservatee. If the representative of the estate is the same person as the guardian of conservator or if there is no such representative, notice also must be given to the heirs or devisees of the deceased ward or conservatee.

c. Discharge of a Guardian. Discharge of a guardian will not be made in the order settling final account. A separate declaration for final discharge must be submitted together with the receipt executed by the former minor. The declaration must show the date on which the minor reached majority. A guardian is not entitled to a discharge until one year after the minor has attained majority unless the minor has given the guardian a valid release.

(effective 7/1/98, amended 1/1/01)

6.18 FEES AND COMMISSIONS

All fees and compensation for attorneys and fiduciaries shall be set by the court.

a. Court authorization is required for advance payment of any compensation to a guardian, conservator of an attorney for any such fiduciary.

b. Attorney and conservator fees are not payable under a temporary conservatorship, unless Probate Code section 2640 is satisfied.

c. The court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services "extraordinary".

d. The caption of a petition embodying an application for the payment of fees and commissions and the notice of hearing of such petition shall include a reference to the request.

e. Attorney's fees and fiduciary fees may be reduced when the services in question have been rendered for less than a full year.

f. In the event the attorney has performed bookkeeping and other services for an individual fiduciary, the court may award the fiduciary's attorney a larger compensation and the individual fiduciary a lesser compensation and the individual fiduciary a lesser compensation.

g. Only legal fees for counsel appointed by the court to represent the conservatee may be awarded and included in the Order Appointing Conservator.

h. Where an attorney is the fiduciary and is a member of a law firm, attorney's fees will not be allowed unless a declaration is executed and filed by the fiduciary agreeing that the fiduciary will not share in the attorney's fees to be received by the firm.

i. The fiduciary may employ tax counsel, accountants or other tax experts for the preparation of tax returns and for other tax services. The court may deduct from the fiduciary's commissions any sum paid from estate funds for performance of the fiduciary's duties such as ordinary accounting and bookkeeping services.

(effective 7/l/98, amended 1/1/01)

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Ventura County
Probate Rules

Effective January 1, 2010

CHAPTER 10
PROBATE, CONSERVATORSHIPS, GUARDIANSHIPS AND TRUSTS

These rules supplement the Probate Code in a few particulars. Pro per parties and counsel are urged to consult the Probate Code and the California Rules of Court and to become familiar with the provisions that relate to their matters.

10.00 PROBATE COURT PROCEEDINGS GENERAL RULES

10.01 GUARDIANSHIP

10.02 CONSERVATORSHIP

10.03 PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

10.04 PROBATE PROCEEDINGS

10.05 ORDERS (Deleted effective 7/1/98)

10.06 EX PARTE PETITIONS (Deleted effective 7/1/98)

10.07 COPY OF WILL (Deleted effective 7/1/98)

10.08 BROKERS' COMMISSIONS (Deleted effective 7/1/98)

10.09 PROBATE REFEREES (Deleted effective 7/1/98)

10.10 CAVEAT (Deleted effective 7/1/98)

10.11 SUBMISSION OF ORDERS (Deleted effective 7/1/98)

10.12 GUARDIANSHIP PROCEDURES (Deleted effective 7/1/98)

10.00 PROBATE COURT PROCEEDINGS GENERAL RULES

A. Code Citations

Except for those pleadings filed using Judicial Council legal forms, all petitions, pleadings and other moving papers filed in each case shall cite on the first page, in brackets immediately below the caption, the code section(s) pursuant to which the pleading is brought.

B. Appearance

Appearance of counsel or pro per party is required in the following situations:

1. Contested matters;

2. Petitions to establish conservatorships;

3. Petitions to establish guardianships;

4. Petitions to terminate guardianships;

5. Petitions to confirm sale of property;

6. All uncontested matters on which proposed orders have not been submitted to the clerk of the court at least three (3) court days prior to the date of the hearing.

C. Orders

In all matters to be heard by the court, counsel or pro per litigants shall prepare and submit appropriate forms of orders, at the latest, at the time of the hearing.

D. Petition for Ex Parte Order

Ex parte petitions are strongly disfavored. If supported by a substantial showing of need, the court may issue orders shortening time to set the matter for full hearing at the regular probate calendar.

1. The court will require the moving party to give at least twenty-four (24) hours telephone or facsimile notice or five (5) court days mailing notice of the nature of the petition to counsel (or in the absence thereof to the other interested parties themselves) and those who request special notice, together with the proposed time and place of the hearing. No later than noon the preceding day before the ex parte hearing is held, moving counsel shall submit a declaration to the court setting forth the facts showing that notice has been given, or supporting the conclusion that notice should be waived for good cause.

The court will not receive live testimony or offers of proof from the moving party. All evidence from the moving party must be in writing and under penalty of perjury.

2. No written opposition is required. Opposition to the ex parte matter may be given by telephone, if arranged in advance with the court. Offers of proof may be taken from the opposing party. If the court deems it appropriate, live testimony will be taken on a subsequent day.

3. An ex parte order will not be granted unless (1) an underlying petition has been filed or will be contemporaneously filed; and (2) the relief sought is supported by documentation under penalty of perjury.

4. Petitions for an ex parte order for sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition.

5. As an exception to the above policies, funds may be ordered released from blocked accounts by ex parte petition without notice and without appearance, provided that the following information is included in the petition:

a. Overall size of the estate;

b. Amount not in a blocked account;

c. Amount of the bond;

d. Amount of the release requested; and

e. Itemized use of the amount to be released;

f. If any portion of the amount to be released is not covered by bond, the order must include a provision directing that the amount is to be expended only for the purposes stated.

E. Brokers' Commissions

The court ordinarily will not allow commissions in excess of six (6) percent to brokers entitled to commissions on the sale of real property. Exceptions may be made for good cause shown.

F. Contested Matters

1. Introduction

When objections are filed to a petition or other pleading seeking affirmative relief on the Probate Calendar, the matter shall become a "contested matter" as the term is used in these rules. These rules shall apply to all contested matters.

2. Filing of Petitions and Contests and Setting a Contested Matter for Hearing

All petitions, will contests, and other pleadings seeking affirmative relief or adjudication by the Probate Court shall be filed as soon as the petitioner knows the facts establishing a claim or the right to the requested relief. All such matters shall be set for hearing by the clerk of the court as follows:

a. By statute or rule. As required by statute or a rule.

b. Will contests. A will contest filed before the admission of the will to probate shall constitute an objection to the petition to admit the will, and the hearing on the petition to admit the will shall be continued to a date no less than thirty (30) days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest.

If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a declaration regarding efforts to complete service at least two (2) court days prior to the hearing.

If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest. When service has been completed, the will contest shall be set for long cause matters or short cause hearing pursuant to these rules. The petition to admit the will shall be continued until the court date on the will contest.

3. Service of Notice

All notice requirements on contested matters, including personal service when required, shall be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a declaration regarding efforts to serve shall be filed at least two (2) court days prior to the hearing.

4. Filing of Objections

Objections, including grounds of opposition, to any petition or other pleading filed in probate court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, at least two (2) court days before hearing on the petition or pleading. If written objection has not been filed in accordance with this rule, in the court's discretion the matter will either be continued to allow compliance with this rule or be decided by the court as an uncontested matter.

5. Setting a Contested Matter for Evidentiary Hearing

Unless the matter is submitted for decision on the pleadings and oral argument at the initial hearing, the court in its discretion may take any one or more of the following actions:

a. Short Cause Matter Hearing. If the court determines that the matter requires an evidentiary hearing of three (3) hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter.

If parties desire to submit briefs, they shall be filed in the Probate Department and faxed (in accordance with California Rule of Court 2.306) or personally served on opposing counsel or pro per parties no later than 4:30 p.m. the day prior to the date set for the short cause hearing.

Due to the "short cause" nature of this hearing, the court will not entertain, receive, or consider responses to said briefs. The briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issues to be addressed at the short cause hearing.

The provisions of Rule 10.00.F.11 do not apply to short cause hearings.

b. Trial. If the court determines that the matter will require an evidentiary hearing of more than three (3) hours (a "long cause matter"), the court may set the matter for a case management conference no later than forty-five (45) days after the date of the initial hearing (See Rule 10.00.F.6).

c. Special At Issue Hearing. If the court is unable to determine whether the matter should be set for a short cause hearing or for a case management conference, the court may set the matter for a special at issue hearing within thirty (30) days from the date of the initial hearing (see Rule 10.00.F.7).

d. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

6. Meet and Confer, Joint Case Management Report

If a contested matter is set for a case management conference, counsel or pro per parties shall:

a. Meet and confer no later than ten (10) days before the case management conference; and

b. Report to the court in writing the results of the conference on the form provided by the court.

7. Meet and Confer Regarding Special At Issue Hearing

No less than five (5) days prior to the special at issue hearing date, counsel or pro per parties shall meet and confer in an attempt to determine whether the matter should be:

a. Heard as a short cause matter;

b. Set for a case management conference; or

c. Otherwise resolved.

8. Case Management Conference

At the case management conference, the court may take any one or more of the following actions:

a. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

b. Set the following dates based upon review of the Joint Case Management Report and the representation of counsel or pro per parties;

(i) Trial date;

(ii) Joint disposition conference date;

(iii) Discovery cut-off date;

(iv) Law and motion cut-off date;

(v) Settlement conference date, if requested.

c. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration or to a Special Master or Referee or to mediation.

d. Dispense with any of the procedures provided herein for good cause.

e. Direct counsel or pro per parties to submit an order setting forth the dates and directives of the court.

9. Settlement Conference

In lieu of participating in a long cause MSC in Courtroom 22, parties may stipulate to an attorney who the probate judge may appoint as a judge pro tem. That person will preside over a judicial MSC process.

10. Settlement Conference Statement

Three (3) court days before a settlement conference, each party shall submit to the court or judge pro tem and serve a settlement conference statement addressing the issues and interests involved in the probate matter and that party's settlement position.

11. Trial Briefs and Motions In Limine

All motions in limine and trial briefs shall be filed with the clerk of the trial court and faxed (in accordance with California Rules of Court, Section 2.306) or personally served on opposing counsel or pro per parties no later than 4:30 p.m. three (3) court days prior to the date set for trial. Opposition pleadings to in limine motions shall be filed and faxed (in accordance with California Rules of Court, Section 2.306) or personally served on opposing counsel or pro per parties no later than 12:00 noon of the court day prior to the date set for trial.

12. Continuances

A. The Legal Research section receives all of the probate files for calendared matters approximately fourteen (14) days preceding the hearing date. The Legal Research attorneys must be notified by telephone as soon as possible when a matter is to be continued or placed off calendar in order to avoid unnecessary review. Once a tentative ruling has been issued, all continuances must be requested by a Request for Continuance (local form), a stipulation and proposed order, or a motion for

continuance, not by an informal request to Legal Research.

B. All continuances of probate matters shall be for not less than two weeks from the hearing date. All continuances or off calendar requests must be made by the moving or petitioning party, and must be with the agreement of the opposing party. A stipulation for continuance must be filed prior to the continued date. A "Notice of Continuance," not signed by both parties, has no effect. A non-stipulated continuance or a continuance for less than two weeks will be granted only on noticed motion, made on an order shortening time.

C. Once the matter has been reviewed by Legal Research, no continuances will be granted, except by order of the court. This applies even if a written stipulation is received prior to the original hearing date.

D. Once the matter has been reviewed by Legal Research, it may not be taken off calendar, except by order of the court, or it is otherwise certain that the matter will not be re-calendared.

E. When utilizing a Request for Continuance form, the moving or petitioning party must notify Legal Research of the requested continuance no later than when the Request for Continuance is submitted to the court.

(Revised effective 1/1/07)

10.01 GUARDIANSHIP

A. Guardianship Procedures

1. Investigation

It is the policy of Ventura County to require investigation, pursuant to Probate Code Section 1513, of all petitioners for guardianship except upon judicial finding that good cause exists to waive the investigation.

A copy of all filed documents shall be provided for the court investigator by presenting an extra copy of the filed documents to the probate clerk at the time of the filing of the petition.

The investigation report regarding petition for guardianship of the person of a minor required under Probate Code section 1513, for proposed guardians who are relatives of the minor, shall be prepared by Family Court Services and for non-relatives shall be prepared by the Ventura County Human Services Agency. The clerk of the court shall provide notice of the petition to the appropriate investigator upon the filing of all necessary documents. The completed reports shall include and discuss the information required under Probate Code section 1513(a).

Upon filing of a petition to terminate the guardianship of a minor, the clerk shall set the matter for hearing. At the hearing, the court may grant or deny the petition or may refer the matter to the appropriate investigator for a report and recommendation regarding the termination of the guardianship and continue the hearing to a date when the report will be completed. When the guardian is a relative the matter will be referred to the Family Court Services for a report. When the guardian is a non-relative the matter will be referred to the Human Services Agency for a report.

2. Natural, Custodial Parent

A proposed guardian who is also a natural, custodial parent may request a waiver by the court of the appointment of a court investigator, probate officer or domestic relations investigator as provided by Probate Code section 1513, prior to or after the filing of the petition for guardianship, by either an ex parte motion or notice of motion for good cause.

3. Questionnaire

Proposed guardians shall submit a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), pursuant to Probate Code sections 1510(f), 1512, and a "Guardianship Questionnaire", pursuant to Probate Code section 1513, at the time the petition for guardianship is filed.

A copy of a birth certificate, custody order or declaration of a person present at birth, shall be attached to the questionnaire. If such records are not readily available, date of birth shall be proved by other evidence, such as school records.

4. Records Check

Law enforcement and Children's Protective Services record checks will be conducted on all proposed guardians.

5. Duties and Responsibilities

Prior to issuance of Letters, Guardians of the person of a minor and of the Estate are required to file with the clerk an acknowledgment of receipt of the duties and responsibilities of their office. (Judicial Council Form GC-248.)

6. Coordination of Pending Custody Proceedings in Superior Court of California, County of Ventura

Where a petition for guardianship of the person of a minor is pending, and where it appears to the court that a custody proceeding concerning the same minor is pending in any other department of the Ventura County Superior Court, the Probate Guardianship Court shall coordinate the proceedings to avoid conflicting custody orders. The Supervising Judge of the Family Law Department shall resolve any conflict and determine in which court the combined custody/guardianship proceedings shall be held.

7. Notification to Other Counties With Custody Proceedings Re Ventura County Guardianship Orders

a. Where it appears to the court that custody proceedings exist for the same minor child in one or more counties other than Ventura, the Ventura County Superior Court will notify the other county or counties of the appointment of a guardian for the minor.

b. Parties contemplating petitioning for guardianship of a minor child in Ventura County when there are already existing custody proceedings and orders filed in another county are strongly encouraged to file their petition for guardianship in the county where custody has or will be determined so as to avoid the possibility of conflicting custody orders.

B. Guardianship Mediation

1. General

The court may order the parties in any guardianship proceeding to participate in mediation with Family Court Services for the purpose of attempting to resolve any disputes, including custody of and visitation with the minor. Mediation shall be conducted in accordance with the laws, rules, standards, and procedures specified for Family Law custody and visitation issues, including, but not limited to, the provisions of Family Code section 3160 et seq, California Rules of Court, rule 5.210 et seq, and Ventura County Superior Court Local Rule 5.30 et seq. If the parties are unable to reach agreement, the mediator shall submit a recommendation to the court and provide a copy to all parties who participated in the mediation.

C. Ex Parte Request for Temporary Guardianship of a Minor Person

1. The petition for appointment of a temporary guardian of a minor person may be brought ex parte, provided the court finds a good cause exception to the notice otherwise required under Probate Code section 2250(e). Any party seeking an ex parte order appointing a temporary guardian must comply with California Rules of Court Rule 7.1012.

2. All hearings on requests for ex parte guardianship orders shall be set with the probate guardianship judge's clerk at least 12 hours prior to the requested date and time for the hearing. At the time of setting the hearing, the petitioner shall provide all requested personal information sufficient to allow the court's clerk to check criminal and child protective services records of the guardian.

3. Exparte hearings for temporary guardianship of a minor person will be set only, in most cases, if the proposed ward is already in the physical custody of the proposed guardian. If a person believes a child is at risk of harm and the child is not in that person's physical custody, then she or he should contact the hotline for reporting child abuse operated by the Children and Family Services division of the Ventura County Human Services Agency.

4. Unless otherwise ordered, a party seeking an ex parte order appointing a temporary guardian for a minor person must comply with the notice required under California Rules of Court, rule 3.1203(a).

5. In addition to the other required documents, a party seeking an ex parte order appointing a temporary guardian for a minor person must submit the following documents no later than 12 noon the court day before the ex parte appearance:

a. A declaration showing facts sufficient to allow the court to determine if good cause exists to find an exception to the notice required under Probate Code section 2250(e) and California Rules of Court, rule 7.1012. If a social worker has recommended filing the petition because the child(ren) will be subject to detention, that fact shall be included in the declaration.

b. A declaration showing compliance or reasons for non-compliance with the notice required under California Rules of Court, rules 3.1203(a) and 3.1204(b).

c. The original proposed order.

6. The petitioner(s) shall appear at the time set for the ex parte hearing and check in with the court bailiff or clerk. If no person appears opposing the temporary guardianship, the court may grant or deny the request without a hearing. If a person appears opposing the request, the court shall hold a hearing, on the record.

(Revised effective January 1, 2009)

10.02 CONSERVATORSHIP

A. Petition for Appointment of Probate Conservator

1. The petitioner is not required to submit an order appointing a court investigator pursuant to Probate Code Section 1454. There is a general order appointing the Ventura County court investigator as the investigator for the court in all cases under Division 4 of the Probate Code requiring appointment of such investigator.

2. The Petition for Appointment of Conservator (Judicial Council form GC-310), page four, item 10a, should include the telephone numbers of all relatives within the second degree of the proposed conservatee or other names listed.

3. Prior to Letters of Conservatorship being issued, individual conservators shall purchase the "Handbook for Conservators", view the video "Understanding Conservatorships", and complete and file with the clerk of the court the "Duties of Conservator" form (Judicial Council form GC-348) and the court's local form "Confirmation of Viewing Conservatorship Video (VN-182). Private professional conservators as defined in Probate Code section 2341 are not required to purchase the handbook and view the video in every case. They are required to show proof including the dates of purchasing the handbook and viewing of the video. If the handbook and/or video are revised or replaced the professional conservators will be required to purchase the revised handbook and view the revised video.

B. Notice, Hearing on Petition for Appointment

1. Upon filing a petition for appointment of a conservator, the clerk shall set the same for hearing and issue a citation. If service of the citation is incomplete on the return date, it cannot be perfected by continuance and completion of service except by issuance of an amended citation. In such circumstances the original citation shall be filed showing no service. Service of a citation cannot ordinarily be waived.

2. In order to eliminate unnecessary delays, upon filing a petition to establish a limited conservatorship, the attorney of record should set the matter for hearing forty-five (45) days after the filing date. The extra time is needed for the Regional Center to complete its required assessment pursuant to Probate Code section 1827.5.

3. A declaration must be given setting forth the efforts made to locate the address and telephone number of any person entitled to notice for whom such address information is incomplete.

C. Appointment of Attorneys for Conservatee

1. An attorney for a conservatee or for a spouse alleged to lack legal capacity in a petition under Probate Code section 3100 may be appointed where appropriate by the court on its own motion, by petition, or by an unnoticed, ex parte application by any interested party.

2. Unless sooner relieved, an appointed attorney will remain of record until the hearing on the final account.

D. Court Investigator

1. A copy of all filed documents shall be provided for the court investigator. The original documents and one copy shall be presented to the probate clerk at the time of filing. A continuance may be required if any of the required forms are not provided to the court investigator's office.

2. Fees for services of the court investigator shall be paid promptly upon completion of the investigation. In the case of an initial investigation, the fee shall be paid within 120 days of appointment. A petition for waiver of the fee shall be served upon the court investigator's office, and shall only be considered for the account period in which it is requested, unless otherwise ordered by the court.

E. Private Professional Fiduciaries

1. A professional fiduciary is defined under Probate Code section 60.1 and Business & Professions Code section 6501(f). Professional fiduciaries appointed by the court under Probate Code section 2340 must comply with all of the provisions and requirements under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code and

California Code of Regulations sections 4400-4580.

2. All Professional Fiduciaries appointed by the Court are to comply with the applicable provisions found in the California Rules of Court, rules 7.1050-7.1063.

F. Petition to Determine Capacity to Give Informed Consent for Medical Treatment

1. Hearings on petitions to determine capacity to give informed consent to medical treatment shall be set no earlier than forty-five (45) days after the filing date to allow time for the court investigator's report.

2. A declaration by a licensed physician, psychologist or psychiatrist who has examined and/or observed and evaluated the conservatee attesting to the fact that the conservatee is no longer able to determine his or her medical care shall be filed with the court. The declaration as to capacity of the conservatee shall be marked "CONFIDENTIAL", filed separately (not as an attachment to the petition or any other document), and placed in the case's confidential file. This declaration is in addition to the medical affidavit required attesting to the conservatee's inability to attend the court hearing.

G. Continuances

When the attorney of record obtains a continuance in a conservatorship matter where the court investigator is completing a report, the court investigator's office shall be notified by the party requesting the continuance.

H. Letters of Conservatorship

If the letters of conservatorship are not filed within forty-five (45) days of the order appointing conservator, unless application for a longer period is made and granted, the conservator's powers will automatically be suspended and no letters shall be issued by the clerk until a further order is executed by the court.

I. General Plan

1. The court may, in its discretion, at the time of appointment, order the conservator of the person to file a General Plan within ninety (90) days after appointment. The General Plan will include the following information:

a. The conservatee's name, address, date of birth, and telephone number;

b. Type of residence;

c. Description of current level of care;

d. Physical and mental condition of the conservatee;

e. Frequency of visits to the conservatee by the conservator;

f. Involvement of family and friends of the conservatee;

g. Estimated annual conservator's fees;

h. Estimated annual attorney's fees;

i. Estimated annual cost of personal care;

j. Anticipated changes in the conservatee's residence, level of care, physical and mental condition;

k. Unusual circumstances related to the conservatee or the conservatorship estate.

l. The General Plan will be considered confidential and should be a separate report so that it can be filed in the conservatee's confidential file. It may only be distributed to those who are entitled to the Investigator's Report, pursuant to Probate Code section 1851.

2. If a General Plan is ordered and an "Order to Show Cause" (OSC) is issued by the court for failure to submit a General Plan within the required time, the hearing on the OSC will automatically be dismissed upon the timely filing of a proper General Plan prior to the hearing on the OSC.

3. The conservator must give notice of the filing of the plan pursuant to Probate Code Section 1460.

a. Objections to the plan may be filed within thirty (30) days after the filing of notice of filing.

b. The court may schedule a hearing on the plan if there are objections or if the court determines that a hearing would be in the conservatee's best interest.

4. This local court rule does not apply to conservatorships in which the Director of Developmental Services or Public Guardian is appointed conservator.

J. Status Reports

1. Notwithstanding the repeal of the statutory requirement to do so, all conservators must file a status report after the first anniversary of the establishment of the conservatorship and biennially thereafter. Status reports shall be filed as separate reports to be included in the conservatee's confidential file.

2. All status reports shall contain the information required in General Plans as stated in sub-paragraph I above.

3. If an "Order to Show Cause" (OSC) is issued by the court for failure to file a Status Report within the required time, the hearing on the OSC will automatically be dismissed upon the timely filing of the Status Report.

K. Orders for Support

1. Court approval ordinarily is not required to expend funds up to $4,000 per month for the support of a conservatee. Court approval should be sought to expend funds exceeding $4,000 per month for the support of a conservatee, especially if there is a probability that the estate will be entirely consumed by reason of such payments.

2. Prior court approval is required to expend money for the support of anyone other than the conservatee, such as maintenance of dependents of the conservatee and the payment of surplus income to the family of a conservatee.

3. Notice of hearing must be given under Probate Code Section 1460.

L. Fees

Probate Code Sections 2640-2646 govern the fees of the conservator and attorney. In addition to these statutory rules, the following apply:

1. In addition to a narrative of the services performed and value to the estate, the petition for fees shall set forth the dates, time spent, specific description of services performed and the hourly rate of the person(s) performing the services.

2. The court will review requests for fees on a case by case basis, considering the experience, knowledge, expertise and professional status of the conservator or attorney, as well as the difficulty or complexity of the case, responsibility assumed, and the urgency demanded.

a. Principles by which the reasonableness of the requested fees will be reviewed include:

(i) Whether conservators have subcontracted for services that do not require their level of skills and which can be billed at a lower hourly rate. These may include bookkeeping, transportation and housekeeping. The appointed conservator shall be responsible to ensure that the sub-contractors have social security numbers, and are licensed and insured if operating an automobile during the course of their duties.

(ii) Costs for "overhead", including mileage, phone calls and photocopy charges, will not be found to be reasonable absent extraordinary circumstances.

(iii) Fewer conservator hours will usually be expected if the conservatee is in a residential care setting rather than in a private home.

3. In appropriate circumstances, particularly where all or a portion of the fee exceeds the cash on hand in the estate, the court may issue its order imposing a lien for fees on any or all of the assets of the estate, subject to liquidation for reasons other than satisfaction of the unpaid fee.

M. Appointment of Successor Conservator

1. The conservatee's presence at the hearing for appointment of a successor conservator will not automatically waive the investigation if there is any opposition or other concerns surrounding the circumstances at the time of the petition. In cases where

an investigation is required, the petition shall be set for hearing no earlier than forty-five (45) days following the filing in order to provide the court investigator with sufficient time to complete the investigation.

2. Judicial Council form GC-310 must be used in all petitions for appointment of successor conservators.

N. Termination

When the conservatorship is being terminated for reasons other than death, it is recommended that the attorney of record set a termination hearing at least thirty (30) days in advance in order to allow time for a court investigator report.

(Revised effective 1/1/10)

10.03 PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

A. Temporary Conservatorships and Guardianships

1. The petition for appointment of a temporary conservator/guardian may be brought ex parte, provided that the notice provisions of Probate Code Sections 2250(e) are satisfied, either by giving notice or by submission of a declaration showing facts sufficient to allow the court to determine that good cause exists to eliminate or alter the notice requirements and provided that the following information is submitted:

a. The original and copy of the petition and proposed order;

b. A detailed statement of facts in the petition establishing the necessity for the temporary conservatorship/guardianship; and

c. An endorsed filed copy of the petition or appointment of the permanent conservator/guardian. However, if the attorney is informed that the petition for appointment of a permanent conservator/guardian will be contested, all known potential objectors shall be notified at least 48 hours in advance of the time and place the petition for appointment of the temporary conservator/guardian will be presented.

2. Ordinarily the court will require a bond for temporary conservators/guardians of the estate.

3. Letters of temporary conservatorship/guardianship expire on the date of the hearing on the appointment of the permanent conservator/guardian or thirty (30) days after appointment of the temporary conservator/guardian, whichever is later, unless the court extends the termination date pursuant to Probate Code Section 2257 (2)(b).

4. The appointment of an attorney for the proposed conservatee, shall be specified on item 3(I) of the "Order Appointing Temporary Conservator".

B. Bond of Conservator/Guardian

1. When the bond of a conservator or guardian must be increased, the court favors the filing of an additional bond rather than the filing of a substitute bond. When liability of a conservator's or guardian's bond is to be decreased, the court favors the use of an order decreasing the liability of the existing bond rather than the filing of a substitute bond.

2. Inventory and Appraisals shall contain the information in the "Statement About the Bond" section of the Judicial Council form.

3. The court will consider an order with no bond required, or with minimal bond where:

a. It is proved through declaration or other sworn testimony that conservatee knowingly and competently executed a document nominating the proposed conservator of the estate and waiving bond; and

b. In the court's opinion the estate is not at undue risk.

C. Voluntary Auditor

1. Petitions for approval of periodic accountings and for fees may be reviewed by a member of a Volunteer Auditor's panel. The auditor may review the petition and accounting for the following:

a. The timeliness of the accounting;

b. The filing of an Inventory and Appraisement and Confidential Status Report;

c. The balance of the Summary of Account;

d. The rate of depletion of the estate;

e. The sufficiency and validity of bond;

f. The income of the estate, including whether all income of the estate is shown in Schedule "A," and whether all bank accounts are kept in California accounts;

g. The disbursements of the estate, including the date, purpose and amount of each expenditure, and whether they are reasonable in light of the benefit to the conservatee/ward and/or the estate. The schedule of disbursements shall also be reviewed for any payments made to the conservator/guardian or counsel for conservator/guardian;

h. Whether sales of property, if any, have been made appropriately;

2. The fees requested by the conservator/guardian, if any, and whether such fee request is reasonable, and whether the statement of services provided is sufficiently detailed.

3. The review of the volunteer auditor may give the petition an overall rating, and if any action is called for, will specifically address such deficiencies to be corrected by the conservator/guardian. The report shall be reviewed by the office of the court investigator upon its completion, filed and served on all the parties. The content of the auditor report shall not be used as a basis for the parties to take further action unless specifically directed by order of the court.

D. Death

Upon the death of the conservatee or ward, the conservator or guardian shall file a copy of a death certificate with the court within thirty (30) days.

E. Final Accountings Following Death of Conservatee or Ward

Conservators or guardians shall file a death certificate within thirty (30) days of the death of the conservatee or ward. The final accountings, as required in the Probate Code, shall be filed within ninety (90) days of the death of the conservatee or ward.

(Revised effective 7/1/08)

10.04 PROBATE PROCEEDINGS

A. Copy of Will

Each petition for probate of a will shall have attached thereto a typed copy of the will. If less than an entire document is offered for probate, the petition, and the proposed order shall specify the material offered for or admitted to probate.

B. Probate Referees

Requests for appointment of probate referees shall be submitted to the Executive Officer and Clerk, together with appropriate forms of orders. The Executive Officer and Clerk shall complete the orders, entering the names of referees in accordance with an approved plan of assignment. Variance from appointment in accordance with the plan shall be made only by a judge.

C. Probate Bond

1. When the probate bond must be increased, the court favors the filing of an additional bond rather than the filing of a substitute bond. When liability of a personal representative's bond is to be decreased, the court favors the use of an order decreasing the liability of the existing bond rather than the filing of a substitute bond.

2. Inventory and Appraisals shall contain the information in the "Statement About the Bond" section of the Judicial Council form.

(Revised effective 7/1/98)

10.05 ORDERS

(Deleted effective 7/1/98)

10.06 EX PARTE PETITIONS

(Deleted effective 7/1/98)

10.07 COPY OF WILL

(Deleted effective 7/1/98)

10.08 BROKERS' COMMISSIONS

(Deleted effective 7/1/98)

10.09 PROBATE REFEREES

(Deleted effective 7/1/98)

10.10 CAVEAT

(Deleted effective 7/1/98)

10.11 SUBMISSION OF ORDERS

(Deleted effective 7/1/98)

10.12 GUARDIANSHIP PROCEDURES

(Deleted effective 7/1/98)

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Yolo County
Probate Rules

Effective January 1, 2009

CHAPTER 6
PROBATE RULES

RULE 25
GENERAL PROBATE

25.1 REAL ESTATE AGENT'S COMMISSION OF SALE OF REAL PROPERTY (PROBATE CODE SECTION 10161, ET SEQ)

25.2 COMMISSION TO REAL ESTATE AGENT SECURING INCREASED BID (PROBATE CODE SECTION 10161)

25.3 EXCLUSIVE LISTING FOR SALE OF REAL PROPERTY

25.4 ATTORNEY'S FEES IN SPOUSAL PROPERTY DISTRIBUTION CASES

25.5 PROBATE JURY TRIALS

25.6 DETERMINATION OF COMMUNITY OR SEPARATE PROPERTY

25.7 DECLARATION REGARDING ATTENDANCE AT HEARING TO APPROVE MINOR'S COMPROMISE

25.8 USE OF JUDICIAL COUNCIL FORM DE-147S

RULE 26
GUARDIANSHIPS OF THE PERSON OF A MINOR

26.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING

26.2 PENDING ADOPTION

26.3 INDIAN CHILD WELFARE ACT (ICWA)

26.4 GUARDIANSHIP HEARING

26.5 PROBATE INVESTIGATOR OR SOCIAL SERVICES

26.6 TEMPORARY GUARDIANSHIPS

26.7 APPOINTMENT OF SUCCESSOR GUARDIAN

26.8 APPOINTMENT OF LEGAL COUNSEL FOR THE MINOR

RULE 25
GENERAL PROBATE

25.1 REAL ESTATE AGENT'S COMMISSION OF SALE OF REAL PROPERTY (PROBATE CODE SECTION 10161, ET SEQ)

Upon confirmation of the sale of real property, a real estate agent's commission in excess of the amounts set forth in the following schedule will generally not be allowed:

(a) Improved property: 6% of the sale price

(b) Unimproved property: 10% on the first $20,000; 8% on the next $30,000; 5% on amounts over $50,000

(c) Farm property usually will be considered unimproved property.

(Effective January 1, 2007)

25.2 COMMISSION TO REAL ESTATE AGENT SECURING INCREASED BID (PROBATE CODE SECTION 10161)

Where an original bid is made by a purchaser directly to the estate, and at the time of the return of sale an increased bid is made through a real estate agent that results in confirmation, the court will allow the agent one-half of the authorized commission on the original bid and the full commission on the remainder of the purchase price, if the total commission does not exceed the maximum allowed by law.

(Effective January 1, 2007)

25.3 EXCLUSIVE LISTING FOR SALE OF REAL PROPERTY

In the event that a personal representative agrees to grant to a real estate agent an exclusive listing for the sale of real property, as permitted by Probate Code section 10150(c), the listing agreement shall provide that said agreement is subject to court approval. In all cases any order approving such an exclusive listing arrangement shall provide that a reasonable broker's commission will be determined by the court at the time of confirmation of sale.

(Effective January 1, 2007)

25.4 ATTORNEY'S FEES IN SPOUSAL PROPERTY DISTRIBUTION CASES

(a) In cases where a spousal property petition has been filed pursuant to Probate Code section 13650, et seq., the court will disapprove attorney fees that exceed one-third of the statutory probate fee, unless the attorney and the client have previously executed a written agreement concerning attorney fees.

(b) Any petition for a spousal property distribution of the decedent's assets that requests attorney fees shall be accompanied by a summary of fiduciary's accounting that reflects what the statutory probate fee would have been if calculated pursuant to Probate Code section 10800 et seq.

(Effective January 1, 2007)

25.5 PROBATE JURY TRIALS

When a jury trial has been properly demanded in a probate matter, it shall be the responsibility of counsel to prepare and submit jury instructions to the court. Such instructions shall be submitted before any witnesses are sworn.

(Effective January 1, 2007)

25.6 DETERMINATION OF COMMUNITY OR SEPARATE PROPERTY

In any proceeding under Probate Code sections 13150, 13200 or 13650 where the court is to consider or determine whether property is community property or separate property, the petition shall include the following allegations:

(a) If the will leaves the property sought to be confirmed outright to the surviving spouse, no allegations as to the character of the property are necessary;

(b) If there is a written community property agreement, a copy of the agreement shall be attached to the petition. If the agreement covers all property about which the petitioner requests a determination, no additional allegations are required;

(c) If there is no will and no written community property agreement or if the written agreement does not cover all the property about which the petitioner requests a determination, the petitioner should allege facts sufficient to show that the property is community property, including:

(1) date and place of marriage;

(2) the decedent's net worth at the time of marriage;

(3) whether or not the decedent received any significant gifts or inheritance after marriage;

(4) facts to show that the property to be set aside is not traceable to such initial net worth or later gift or inheritance.

(Effective January 1, 2007)

25.7 DECLARATION REGARDING ATTENDANCE AT HEARING TO APPROVE MINOR'S COMPROMISE

Any petition to approve the compromise of a minor's claim or pending action shall be accompanied by a declaration stating whether the minor and the petitioner will attend the hearing. Any request for the minor or petitioner's attendance to be excused shall be supported by a showing of good cause.

(Effective January 1, 2007)

25.8 USE OF JUDICIAL COUNCIL FORM DE-147S

This court does not require proposed personal representatives to file a Confidential Supplement to Duties and Liabilities of Personal Representative form (Judicial Council Form DE-147S).

(Effective January 1, 2007)

RULE 26
GUARDIANSHIPS OF THE PERSON OF A MINOR

26.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING

(a) Notice required by Probate Code section 1511(b) shall be personally served while the notice required by Probate Code section 1511 (c), (d) and (e) is to be mailed.

(b) Relatives in the second degree include: maternal grandparents, paternal grandparents, parents, brothers and sisters, and any children.

(c) Notice shall be given to persons not otherwise entitled to notice who are parties to any other proceeding to appoint a guardian for the minor if such proceedings are known to the petitioner at the time of filing.

(d) The Clerk's Office will set a hearing date approximately sixty (60) days after filing to allow time for the Court Investigator's report.

(e) In the case of a petition for guardianship of the person by a relative, notice shall be mailed to the Probate Investigator.

(f) In the case of a petition for guardianship of the person by a non-relative, notice under Probate Code sections 1540 through 1543, inclusive, shall be mailed at least forty-five (45) days prior to the hearing date to:

(1) The State Department of Social Services; and

(2) Yolo County Department of Employment and Social Services.

(g) A declaration of due diligence is required where the petitioner cannot determine the name or address of a relative or party to whom notice is required. The declaration shall specify all efforts undertaken to identify and locate such relative or party. The petitioner should check the following and state the results in the declaration: telephone directory, directory assistance, relatives and friends, former employers, and last known address.

(Effective January 1, 2007)

26.2 PENDING ADOPTION

Pursuant to Probate Code section 1543, if it appears that adoption proceedings are pending, letters of guardianship will not be issued nor the hearing permitted until the agency investigating the adoption has filed its report.

(Effective January 1, 2007)

26.3 INDIAN CHILD WELFARE ACT (ICWA)

Guardianships are subject to the provisions of the federal Indian Child Welfare Act (ICWA). If there is any reason to believe that the child has Native American heritage, the petitioner shall provide notice to the appropriate tribe(s) and the Secretary of the

Department of the Interior as required by ICWA.

(Effective January 1, 2007)

26.4 GUARDIANSHIP HEARING

The minor and the proposed guardian shall attend the hearing to establish a guardianship of a minor, unless their presents is waived by the court.

(Effective January 1, 2007)

26.5 PROBATE INVESTIGATOR OR SOCIAL SERVICES

(a) The Probate Investigator conducts an investigation on all petitions to establish a guardianship where the proposed guardian is a relative.

(b) Where the proposed guardian is a non-relative, Child Protective Services conducts the investigation. Any delay may cause a continuance. See Probate Code section 1513(g) for the definition of relative.

(c) Once the guardianship is established, the Probate Investigator assists the court in reviewing guardianships of the person and the estate. Counsel and guardians shall cooperate fully with the Probate Investigator.

(d) The Probate Investigator shall be provided with a copy of all petitions to terminate a guardianship.

(e) Fees for the Probate Investigator's report shall be paid within thirty (30) days of the court ordered assessment.

(Effective January 1, 2007)

26.6 TEMPORARY GUARDIANSHIPS

(a) All petitions for appointment of a temporary guardian should be submitted by ex parte application. Proof of service of the petition, pursuant to Probate Code section 2250, shall be filed prior to the issuance of an order.

(b) If the court determines that a hearing on the petition for a temporary guardianship is necessary, notice will be sent by the court to the attorney and petitioner. Notice of that hearing shall then be given by the attorney and/or petitioner to those required to receive notice.

(Effective January 1, 2007)

26.7 APPOINTMENT OF SUCCESSOR GUARDIAN

When filing a petition for a successor guardianship of the person, a copy of the petition for successor appointment shall be sent to the Probate Investigator in order to determine if an investigation and report will be required. Successor guardianship petitions shall be set for hearing by the clerk approximately sixty (60) days after the filing date to allow enough time for any required investigation.

(Effective January 1, 2007)

26.8 APPOINTMENT OF LEGAL COUNSEL FOR THE MINOR

If the court determines it would be in the best interests of the minor, the court may appoint private counsel to represent the minor, or the interests of the minor, in an existing guardianship or in a petition to appoint a guardian of the person pursuant to Probate Code section 1470. Counsel for the minor shall not be retained by any party to the contest. The rights, duties and responsibilities of the attorney for the minor in a contest regarding guardianship of the person shall include those specified in Family Code Sections 3150, et seq.

(Effective January 1, 2007)

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Yuba County
Probate Rules

Effective January 1, 2010

CHAPTER 4
PROBATE DEPARTMENT

4.0 GENERAL

4.1 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.2 GUARDIANSHIPS OF MINORS

4.3 CONSERVATORSHIPS

4.0 GENERAL

A. Probate Calendar

The Probate Calendar is heard each Monday (Tuesday if Monday is a holiday) at 9:00 a.m. All probate matters will be calendared for hearing a minimum of fifteen (15) calendar days after filing.

B. Scheduled Hearing Dates

All matters shall be set for hearing initially by the Clerk upon the filing of the first petition. All subsequent documents which are required to be filed prior to a hearing, e.g., proof of service, proof of publication, proof of subscribing witness, etc., shall bear the hearing date.

C. Posted Notice

Notices requiring the Clerk's posting are to be completed on a Judicial Council form of notice of hearing, together with all necessary copies, and filed concurrently with the petition. Said notices shall be posted within the lobby of the Court Information Center.

D. Preparation of Orders

An order or judgment not presented for signature at the time of the hearing shall be presented within five (5) judicial days thereafter and shall indicate in the first paragraph the date of the hearing.

E. Costs of Investigations

Court investigations will be conducted upon filing of a guardianship or conservatorship petition and at the time of each accounting. Charges will be assessed for each investigation and review pursuant to Prob C § 1513.1, and shall be a lien on the estate until paid.

F. Recovery of Waived Fees

Filing fees waived pursuant to Cal Rules of Ct Rule 3.50 et seq and Govt C § 68511.3 are recoverable at the time of appointment of the guardian or conservator. If the guardian or conservator has the ability to reimburse the Court for waived fees, said fees shall be due and payable prior to the issuance of letters.

Amended 7/1/07

G. Confidential Reports

Any confidential report filed in a guardianship or conservatorship proceeding shall be filed as a separate document, shall contain the word "CONFIDENTIAL" in the caption, and shall be verified by the party presenting it.

Effective 7/1/99, Amended 7/1/01

4.1 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

A. Formal Orders

The proposed formal order for a noticed hearing shall be presented to the Clerk not less than two (2) judicial days prior to the scheduled hearing. Orders not so presented may not be signed at the time of the hearing.

B. Attorneys Fees

Petitions, which include a request for statutory attorney's fees, must include a calculation of the manner in which the fee is calculated.

4.2 GUARDIANSHIPS OF MINORS

A. Appointment of Guardian of Minor

1. The attorney for petitioner (or petitioner if in propria persona) shall be responsible for the mailing of all required notices. If there are no relatives within the second degree, the petition shall so allege. A copy of the petition shall accompany each notice of hearing.

2. All petitions for appointment shall be set for a hearing no sooner than 30 days after filing.

3. There shall be no ex parte appointment of a permanent guardian.

4. Petitions for guardianship shall contain an allegation as to whether or not the minor(s) has been or is a party to a civil action in which monetary damages are claimed. If the minor(s) is such a party, the file number of the action must be indicated, as well as the name of the county in which the case is pending.

B. Order Appointing Investigator

Pursuant to Prob C §§ 1513, et seq. and 1543, Superior Court of California, County of Yuba requires an investigation and report when a petition for guardianship is filed. The required form of Order Appointing Investigator [YCSC PR03003.] (Appendix 4).

Amended 7/1/07

C. Non-Relative Guardianship Of Person

If investigation is required pursuant to Prob C § 1540, et seq., the petition for appointment of guardian shall be calendared a minimum of 45 days after filing in order to give the appropriate agency(ies) time within which to conduct the investigation.

D. Effect of Other Proceedings

A guardianship of the person will not be granted by the Probate Court under any of the following circumstances:

1. Family Law Court has jurisdiction over custody of the proposed ward;

2. Adoption proceedings are pending; or

3. The minor is subject to the jurisdiction of the Juvenile Court.

Effective 7/1/99, Amended 7/1/01

4.3 CONSERVATORSHIPS

A. Appointment of Conservator

1. The attorney for the petitioner (or the petitioner if in propria persona) shall be responsible for the mailing of all required notices. If there are no relatives within the second degree, the petition shall so allege. There shall be a separate proceeding for each person for whom the appointment of a conservator is sought. If there are relatives within the second degree whose whereabouts are alleged to be unknown, service upon any such relative at the county seat will be sufficient ONLY if a declaration is filed showing that reasonable efforts were made to locate such relatives.

2. All petitions for appointment shall be set for hearing no sooner than 45 days after filing.

B. Placing Petition on Calendar

When a petition is filed, the Clerk shall set the same for hearing and upon presentation, issue the citation. If service of the citation is incomplete on the return date, it cannot be perfected by continuance and completion of service, except by issuance of an amended citation. In such circumstances, the original citation shall be filed showing no service.

C. Termination of Conservatorship

1. A conservatorship may be terminated in the manner prescribed in Prob C § 1860, et seq. Except in cases where the conservatee is deceased, a petition for termination of a conservatorship shall be set for hearing no sooner than 20 days after filing.

2. A petition for termination of conservatorship of a living person will not be granted unless the conservatee personally appears in court or is excused after the filing of a physician's affidavit or declaration setting forth the reasons why the conservatorship is no longer required.

Effective 7/1/99, Amended 7/1/01

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California Rules of Court
Title *7*

Effective January 1, 2010

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PROBATE RULES

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Drafter's Notes 2000—The new set of probate rules include rules relating to the appointment of executors and administrators, bonds, spousal property petitions, creditors' claims, sales of property, inventories and appraisals, distributions, and contested hearings.

7.1 PROBATE RULES

The rules in this title may be referred to as the Probate Rules.

Rule *7.1* adopted effective January 1, 2007.

7.2 PRELIMINARY PROVISIONS

(a) [Application of rules] The rules in this title apply to every action and proceeding to which the Probate Code applies and, unless they are elsewhere explicitly made applicable, do not apply to any other action or proceeding.

(Subd (a) amended effective January 1, 2007.)

(b) [Purpose of rules] The rules in this title are designed to implement the purposes of the probate law by promoting uniformity in practice and procedure.

(Subd (b) amended effective January 1, 2007.)

(c) [Rules of construction] Unless the context otherwise requires, these preliminary provisions and the following rules of construction govern the construction of the rules in this title:

(1) To the extent that the rules in this title are substantially the same as existing statutory provisions relating to the same subject matter, they must be construed as a restatement and a continuation of those statutes; and

(2) To the extent that the rules in this title may add to existing statutory provisions relating to the same subject matter, they must be construed so as to implement the purposes of the probate law.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) [Jurisdiction] The rules in this title are not intended to expand, limit, or restrict the jurisdiction of the court in proceedings under the Probate Code.

(Subd (d) adopted effective January 1, 2003.)

Rule *7.2* amended and renumbered effective January 1, 2007; adopted as rule *7.1* effective January 1, 2000; previously amended effective January 1, 2003.

7.3 DEFINITIONS AND USE OF TERMS

As used in the rules in this title, unless the context or subject matter otherwise requires:

(1) The definitions in division 1, part 2 of the Probate Code apply.

(2) "Pleading" means a contest, answer, petition, application, objection, response, statement of interest, report, or account filed in proceedings under the Probate Code.

(3) "Amended pleading" means a pleading that completely restates and supersedes the pleading it amends for all purposes.

(4) "Amendment to a pleading" means a pleading that modifies another pleading and alleges facts or requests relief materially different from the facts alleged or the relief requested in the modified pleading. An amendment to a pleading does not restate or supersede the modified pleading but must be read together with that pleading.

(5) "Supplement to a pleading" and "supplement" mean a pleading that modifies another pleading but does not allege facts or request relief materially different from the facts alleged or the relief requested in the supplemented pleading. A supplement to a pleading may add information to or may correct omissions in the modified pleading.

Rule *7.3* amended and renumbered effective January 1, 2007; adopted as rule *7.2* effective January 1, 2000; previously amended effective January 1, 2002, and January 1, 2003.

7.4 WAIVER OF RULES IN PROBATE PROCEEDINGS

The court for good cause may waive the application of the rules in this title in an individual case.

Rule 7.4 renumbered effective January 1, 2007; adopted as rule 7.3 effective January 1, 2000; previously amended effective January 1, 2003.

7.10 EX PARTE COMMUNICATIONS IN PROCEEDINGS UNDER THE PROBATE CODE AND CERTAIN OTHER PROCEEDINGS

(a) [Definitions] As used in this rule, the following terms have the meanings stated below:

(1) "Fiduciary" has the meaning specified in Probate Code section 39, and includes LPS conservators.

(2) "Person" has the meaning specified in Probate Code section 56.

(3) "Pleading" has the meaning specified in rule 7.3, but also includes petitions and objections or other opposition filed in LPS conservatorships. The term does not include creditors' claims and requests for special notice.

(4) A "party" is a fiduciary appointed in a proceeding under the Probate Code or an LPS conservatorship proceeding, and any other person who has filed a pleading in the proceeding concerning a matter then pending in the court.

(5) A "ward" is a minor subject to a guardianship under Division 4 of the Probate Code, including a proposed ward concerning whom a petition for appointment of a guardian has been filed.

(6) "Ex parte communication" is a communication between any party, attorney, or person in a proceeding under the Probate Code or an LPS conservatorship proceeding and the court outside the presence of all parties and attorneys, including written communications sent to the court without copies having been provided to other interested persons.

(7) "LPS Act" is the Lanterman-Petris-Short Act, part 1 of division 5 of the Welfare and Institutions Code, commencing with section 5000.

(8) "LPS Conservatorship" is a conservatorship proceeding under chapter 3 of the LPS Act, commencing with section 5350 of the Welfare and Institutions Code, for persons gravely disabled as the result of a mental disorder or impairment by chronic alcoholism.

(9) A "conservatee" is a person subject to a conservatorship under division 4 of the Probate Code or chapter 3 of the LPS Act, including a proposed conservatee concerning whom a petition for appointment of a conservator has been filed.

(10) A "matter then pending in the court" in proceedings under the Probate Code or in an LPS conservatorship proceeding refers to a request for relief or opposition in pleadings filed in the proceeding that has not yet been resolved by a decision of the court or an agreement of the parties.

(11) Concerning a proceeding under the Probate Code or an LPS conservatorship proceeding, the term "open proceeding" refers to a proceeding that has been commenced and has not been concluded by the final discharge of all fiduciaries or otherwise terminated as provided by law, whether or not there is a matter then pending in the court in the proceeding at any point in time.

(b) [Ex parte communications by parties and attorneys prohibited]

(1) Except under a stipulation of all parties to the contrary, no ex parte communications may be made by a party or an attorney for a party and the court concerning a matter then pending in the court in proceedings under the Probate Code or in an LPS conservatorship proceeding.

(2) Except as provided in (c)(1), the court must treat an ex parte communication to the court described in (1) in the same way that an ex parte communication from a party or attorney for a party must be treated in other civil actions or proceedings or in criminal actions.

(c) [Ex parte communications received and considered]

(1) Notwithstanding (b)(2), a judicial officer or court staff may receive an ex parte communication concerning an open proceeding under the Probate Code or an open LPS conservatorship proceeding for the limited purpose of ascertaining whether it is a communication described in (b) or a communication described in (c)(2).

(2) Subject to the requirements of (c)(3), a judicial officer may consider an ex parte communication from a person about a fiduciary's performance of his or her duties and responsibilities or regarding a conservatee or ward in an open proceeding under the Probate Code or an open LPS conservatorship proceeding. The court may decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person. The court may also take appropriate action, consistent with due process and California law, including one or any combination of the following:

(A) Review the court file and take any action that is supported by the record, including ordering a status report or accounting if it appears that a status report or accounting should have been filed by a fiduciary but is delinquent.

(B) Refer the communication to a court investigator for further action, and receive, consider, and respond to any report from the investigator concerning it;

(C) If the communication discloses possible criminal activity, refer the matter to the appropriate law enforcement agency or prosecutor's office;

(D) If the communication discloses conduct that might subject a person or organization to disciplinary action on a license, refer the matter to the appropriate licensing agency;

(E) If the communication discloses possible elder or dependent adult abuse, or child abuse, refer the matter to appropriate state or local governmental agencies, including adult protective or child protective service departments; and

(F) Set a hearing regarding the communication, compel the fiduciary's attendance, and require a response from the fiduciary concerning the issues raised by the communication.

(3) The court must fully disclose communications described in (c)(2) and any response made by the court to the fiduciary and all other parties to any matter then pending in the court, and their attorneys, unless the court finds good cause to dispense with the disclosure if necessary to protect a conservatee or ward from harm. If the court dispenses with disclosure to any party or attorney, it must make written findings in support of its determination of good cause, and preserve the communication received and any response made by the court. The court may place its findings and the preserved communication under seal or otherwise secure their confidentiality.

Adopted effective January 1, 2008.

CHAPTER 2
NOTICES, PUBLICATION, AND SERVICE
(Amended effective January 1, 2003)

7.50 DESCRIPTION OF PLEADING IN NOTICE OF HEARING

The notice of hearing on a pleading filed in a proceeding under the Probate Code must state the complete title of the pleading to which the notice relates.

Adopted effective January 1, 2003.

7.51 SERVICE OF NOTICE OF HEARING

(a) [Direct notice required]

(1) Except as otherwise permitted in the Probate Code, a notice sent by mail under Probate Code section 1220 must be mailed individually and directly to the person entitled to notice.

(2) A notice mailed to a person in care of another person is insufficient unless the person entitled to notice is an adult and has directed the party giving notice in writing to send the notice in care of the second person.

(3) Notices mailed to more than one person in the same household must be sent separately to each person.

(b) [Notice to attorney] If a notice is required or permitted to be given to a person who is represented by an attorney of record in the proceeding, the notice must be sent as required in Probate Code section 1214.

(c) [Notice to guardian or conservator]

(1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator.

(2) A copy of the notice must also be sent to the ward or conservatee unless:

(A) The court dispenses with such notice; or

(B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is personally served on a California-resident guardian or conservator of the estate of the ward or conservatee.

(Subd (c) amended effective January 1, 2004.)

(d) [Notice to minor] Except as permitted in Probate Code section 1460.1 for guardianships, conservatorships, and certain protective proceedings under Division 4 of the Probate Code, notice to a minor must be sent directly to the minor. A separate copy of the notice must be sent to the person or persons having legal custody of the minor, with whom the minor resides.

(e) [Notice required in a decedent's estate when a beneficiary has died]

(1) *(Notice when a beneficiary dies after the decedent)* Notice must be sent to the personal representative of a beneficiary who died after the decedent and survived for a period required by the decedent's will. If no personal representative has been appointed for the postdeceased beneficiary, notice must be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate.

(2) *(Notice when a beneficiary of the decedent's will dies before the decedent)* When a beneficiary under the will of the decedent died before the decedent or fails to survive the decedent for a period required by the decedent's will, notice must be sent to the persons named in the decedent's will as substitute beneficiaries of the gift to the predeceased beneficiary. If the decedent's will does not make a substitute disposition of that gift, notice must be sent as follows:

(A) If the predeceased beneficiary is a "transferee" under Probate Code section 21110(c), to the issue of the predeceased beneficiary determined under Probate Code section 240, and to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

(B) If the predeceased beneficiary is not a "transferee" under Probate Code section 21110(c), to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

Adopted effective January 1, 2003; amended effective January 1, 2004.

7.52 SERVICE OF NOTICE WHEN RECIPIENT'S ADDRESS UNKNOWN

(a) [Declaration of diligent search] Petitioner must file a declaration describing efforts made to locate a person entitled to notice in a proceeding under the Probate Code, but whose address is unknown, before the court will prescribe an alternate form of notice or dispense with notice under (c). The declaration must state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's business and residence addresses by:

(1) Inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding;

(2) Review of appropriate city telephone directories and directory assistance; and

(3) Search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside.

(b) [Mailed notice to county seat] Mailing notice to a person at a county seat is not a manner of giving notice reasonably calculated to give actual notice.

(c) [The court may prescribe or dispense with notice] If a person entitled to notice cannot be located after diligent search, the court may prescribe the manner of giving notice to that person, or may dispense with notice to that person.

Adopted effective January 1, 2003.

7.53 NOTICE OF HEARING OF AMENDED OR SUPPLEMENTED PLEADINGS

(a) [Amended pleading and amendment to a pleading] An amended pleading or an amendment to a pleading requires the same notice of hearing (including publication) as the pleading it amends.

(b) [Supplement to a pleading] A supplement to a pleading does not require additional notice of hearing, but a copy of a supplement to a pleading must be served if service of a copy of the pleading was required, unless waived by the court.

Adopted effective January 1, 2003.

7.54 PUBLICATION OF NOTICE OF PETITION TO ADMINISTER ESTATE

Publication and service of a *Notice of Petition to Administer Estate* (form DE-121) under Probate Code sections 8110-8125 is sufficient notice of any instrument offered for probate that is filed with, and specifically referred to in, the petition for which notice is given. Any other instrument must be presented in an amended petition, and a new notice must be published and served.

Adopted effective January 1, 2003; amended effective January 1, 2007.

7.55 EX PARTE APPLICATION FOR ORDER

(a) [Special notice allegation] An ex parte application for an order must allege whether special notice has been requested.

(b) [Allegation if special notice requested] If special notice has been requested, the application must identify each person who

has requested special notice, and must allege that special notice has been given to or waived by each person who has requested it.

(c) [Proofs of service or waiver of special notice] Proofs of service of special notice or written waivers of special notice must be filed with the application.

Adopted effective January 1, 2003; amended effective January 1, 2007.

CHAPTER 3
PLEADINGS

7.101 USE OF JUDICIAL COUNCIL FORMS

(a) [Use of mandatory forms] If a petition, an order, or another document to be submitted to the court is one for which the Judicial Council has adopted a mandatory form, that form must be used. Except as provided in this rule, if the Judicial Council has adopted a mandatory form in more than one alternative version, one of the alternative versions must be used. If that form is inadequate in a particular situation, an addendum may be attached to it.

(Subd (a) amended and lettered effective January 1, 2007; adopted as untitled subd.)

(b) [Alternative mandatory forms] The following forms have been adopted by the Judicial Council as alternative mandatory forms for use in probate proceedings or other proceedings governed by provisions of the Probate Code:

(1) Petition for Appointment of Guardian of Minor (form GC-210) and Petition for Appointment of Guardian of the Person (form GC-210(P));

(2) Petition for Appointment of Temporary Guardian (form GC-110) and Petition for Appointment of Temporary Guardian of the Person (form GC-110(P));

(3) Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability (form MC-350) and Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability (form MC-350EX).

(Subd (b) amended effective January 1, 2010; adopted effective January 1, 2007.)

(c) [Use of guardianship petitions] Notwithstanding any other provision of this rule, a party petitioning for appointment of a temporary guardian of the person of a minor may file either form GC-110 or form GC-110(P). A party petitioning for appointment of a general guardian of the person of a minor may file either form GC-210 or form GC-210(P). A party petitioning for appointment of a temporary guardian of the estate or the person and estate of a minor must file form GC-110. A party petitioning for appointment of a general guardian of the estate or the person and estate of a minor must file form GC-210.

(Subd (c) adopted effective January 1, 2007.)

Rule 7.101 amended effective January 1, 2010; adopted effective January 1, 2001; previously amended effective January 1, 2002, and January 1, 2007.

7.101.5. ELECTRONIC GENERATION OF MANDATORY JUDICIAL COUNCIL FORM ORDERS

(a) [Applicability]

This rule applies to the following mandatory Judicial Council form orders used in proceedings under the Probate Code:

(1) *Order for Probate* (form DE-140);

(2) *Order Prescribing Notice* (form DE-200/GC-022);

(3) Order Appointing Guardian ad Litem—Probate (form DE-351/GC-101);

(4) Order Dispensing With Notice (form GC-021);

(5) Order Fixing Residence Outside the State of California (form GC-090);

(6) Order Appointing Temporary Guardian or Conservator (form GC-140);

(7) Order Appointing Guardian of Minor (form GC-240);

(8) Order Terminating Guardianship (form GC-260);

(9) Order Appointing Court Investigator (form GC-330);

(10) Ex Parte Order Re Completion of Capacity Declaration—HIPAA (form GC-334);

(11) Order Appointing Probate Conservator (form GC-340); and

(12) Order Authorizing Conservator to Give Consent for Medical Treatment (form GC-385).

(b) [Definitions]

(1) "CCMS" is the California Case Management System, a statewide integrated software application for managing all case types in the superior courts of this state.

(2) "Electronic generation of a court order" is the electronic generation by a court of a Judicial Council form order listed in (a).

(c) [Modification of electronically generated court orders]

(1) Any court using CCMS for case management of proceedings under the Probate Code may modify any of the Judicial Council mandatory form orders listed in (a) by generating the order electronically in a way that includes in the order signed by the judicial officer only the party-appearance and other preliminary information, findings, and orders actually selected by the court.

(2) An electronically generated court order under this rule must express the findings and orders selected by the court in substantially the same language as the equivalent findings and orders in the Judicial Council form order, and must provide substantially the same party-appearance and other preliminary information provided in the form order.

(3) An electronically generated court order under this rule must have the same general appearance as the Judicial Council form order, including case name, case number, and court address captions and a footer, except that the order may be longer or shorter than the form order. The order must contain a recitation in the footer that it is an electronically generated court order in lieu of a mandatory Judicial Council form order under this rule.

(4) The orders listed in (a) are mandatory forms for all purposes under rule 1.31, except as provided in this rule. An order listed in (a) prepared and submitted to the court by a party or attorney for a party must be prepared on the mandatory Judicial Council form.

(5) A court that elects to electronically generate court orders under this rule may also use or require the use of the Judicial Council form orders listed in (a) in any individual case or proceeding.

(d) [Notification to advisory committees]

Any court electing to electronically generate court orders under this rule must send written notice of its election to do so to the Probate and Mental Health and the Court Technology Advisory Committees and submit additional informational reports as requested by either committee.

(e) [Expiration date]

Unless amended or reenacted by Judicial Council action effective after the effective date of this rule, this rule is repealed effective January 1, 2012.

Adopted effective January 1, 2007.

7.102 TITLES OF PLEADINGS AND ORDERS

The title of each pleading and of each proposed order must clearly and completely identify the nature of the relief sought or granted.

Adopted effective January 1, 2001; amended effective January 1, 2003, previously amended effective January 1, 2002.

7.103 SIGNATURE AND VERIFICATION OF PLEADINGS

(a) [Signature of parties] A pleading must be in writing and must be signed by all persons joining in it.

(b) [Verification by parties] All pleadings filed in proceedings under the Probate Code must be verified. If two or more persons join in a pleading, it may be verified by any of them.

(c) [Signature and verification by attorney] If a person is absent from the county where his or her attorney's office is located, or for some other cause is unable to sign or verify a pleading, the attorney may sign or verify it, unless the person is, or is seeking to become, a fiduciary appointed in the proceeding.

Adopted effective January 1, 2003.

7.104 EXECUTION AND VERIFICATION OF AMENDED PLEADINGS, AMENDMENTS TO PLEADINGS, AND SUPPLEMENTS TO PLEADINGS; USE OF JUDICIAL COUNCIL FORMS

(a) [Amended pleading and amendment to a pleading]

(1) All persons required to sign a pleading must sign an amended pleading. One of the persons required to verify a pleading must verify an amended pleading.

(2) All persons required to sign a pleading must sign an amendment to that pleading. One of the persons required to verify a pleading must verify an amendment to that pleading.

(3) A Judicial Council form must be used for an amended pleading, with the word "Amended" added to its caption, if the form was used for the pleading that is amended. A Judicial Council form must not be used for an amendment to a pleading.

(b) [Supplement to a pleading]

(1) A supplement to a pleading must be signed and verified by one of the persons who were required to sign and verify the pleading that is supplemented. However, the court may, in the exercise of its discretion, accept for filing and consider a supplement to a pleading signed under penalty of perjury by an attorney for the party offering it, where the information contained in the supplement is particularly within the knowledge of the attorney.

(2) A Judicial Council form must not be used for a supplement to a pleading.

Adopted effective January 1, 2003.

CHAPTER *4*
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

7.150 ACKNOWLEDGMENT OF RECEIPT OF STATEMENT OF DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

Before the court issues letters, each personal representative of a decedent's estate (other than a company authorized to conduct a trust business in California) must execute and file an acknowledgment of receipt of Duties and Liabilities of Personal Representative (Form DE-147).

Adopted effective January 1, 2000; amended effective January 1, 2007; previously amended effective January 1, 2002.

7.151 REIMBURSEMENT OF GRADUATED FILING FEE BY SUCCESSFUL SUBSEQUENT PETITIONER

(a) [Duty to reimburse] In decedents' estates commenced on or after August 18, 2003, and before January 1, 2008, a general personal representative appointed on a Petition for Probate (form DE-111) that was not the first-filed petition for appointment of a general personal representative in the proceeding must reimburse the unsuccessful petitioner on the first-filed petition for a portion of the filing fee paid by the unsuccessful petitioner.

(Subd (a) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(b) [Amount of reimbursement] The reimbursement required under this rule is in the amount of:

(1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee that would have been payable on that date for a *Petition for Probate* filed to commence administration of an estate valued at less than $250,000, less

(2) The unpaid amount of any costs or sanctions awarded against the unsuccessful petitioner in favor of the party that sought the personal representative's appointment in the proceeding.

(Subd (b) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(c) [When reimbursement payable] The personal representative must make the reimbursement payment required under this rule in cash and in full no later than the date the Inventory and Appraisal (form DE-160/GC-040) is due under Probate Code section 8800(b), including additional time allowed by the court under that provision.

(Subd (c) amended effective March 1, 2008.)

(d) [Payment from estate funds] The reimbursement payment under this rule is an authorized expense of administration and may be made from estate funds without a prior court order.

(e) [Receipt from unsuccessful petitioner] The unsuccessful petitioner must give a signed receipt for the reimbursement payment made under this rule.

(Subd (e) amended effective March 1, 2008.)

(f) [Personal representative's right to claim refund] A personal representative that is required to but fails to make the reimbursement payment under this rule may not claim a refund of the difference between the estimated filing fee and the corrected filing fee under rule 7.552(c).

(g) [Petitioner on dismissed *Petition for Probate*] A petitioner that is eligible to receive a refund of filing fee for a dismissed *Petition for Probate* under rule 7.552(d) is not an unsuccessful petitioner within the meaning of this rule.

(Subd (g) amended effective March 1, 2008; previously amended effective January 1, 2007.)

Amended effective March 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.

CHAPTER 5
BONDING OF PERSONAL REPRESENTATIVES, GUARDIANS, CONSERVATORS, AND TRUSTEES

7.201 WAIVER OF BOND IN WILL

(a) [Statement of waiver in petition] If the will waives bond, the Petition for Probate must so state.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001, and January 1, 2002.)

(b) [Court's discretion to require bond] The court may require bond if the proposed personal representative resides outside California or for other good cause, even if the will waives bond.

(Subd (b) amended effective January 1, 2001.)

Amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2001, and January 1, 2002.

7.202 TWO OR MORE PERSONAL REPRESENTATIVES

If a will admitted to probate names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all of the named persons serve, the court must require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

Adopted effective January 1, 2000; amended January 1, 2002.

7.203 SEPARATE BONDS FOR INDIVIDUALS

Because a corporate fiduciary (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual cofiduciary, an individual cofiduciary who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate cofiduciary.

Adopted effective January 1, 2000; amended January 1, 2002.

7.204 DUTY TO APPLY FOR ORDER INCREASING BOND

(a) [Ex parte application for order] Immediately upon the occurrence of facts making it necessary or appropriate to increase the amount of the bond, the personal representative, or the guardian or conservator of the estate, must make an ex parte application for an order increasing the bond.

(b) [Attorney's duty] If the personal representative, or the guardian or conservator of the estate, has not already made application under (a), the attorney for the personal representative, or the attorney for the guardian or conservator of the estate, must make the ex parte application immediately upon becoming aware of the need to increase bond.

(c) [Amount]

(1) The application by a personal representative under (a) or by the attorney for a personal representative under (b) must show the value of the estate's personal property and the probable annual gross income of the estate.

(2) The application by a guardian or conservator of the estate under (a) or by the attorney for a guardian or conservator of the estate under (b) must show the value of the estate's personal property, the probable annual gross income of all of the property of the estate, and the sum of the probable annual gross payments of the public benefits of the ward or conservatee identified in Probate Code section 2320(c)(3).

(3) If the personal representative has full Independent Administration of Estates Act (IAEA) authority or the guardian or conservator of the estate has authority to sell estate real property without court confirmation, the application must also show the amount of the equity in estate real property.

Adopted effective January 1, 2000; amended effective January 1, 2003; previously amended effective January 1, 2002.

7.205 INDEPENDENT POWER TO SELL REAL PROPERTY

If the personal representative requests or has been granted an independent power to sell or hypothecate real estate or to lease it for a term of more than one year, the personal representative must state in the request to fix the amount of the bond the value of

the real property less encumbrances.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.206 BOND UPON SALE OF REAL PROPERTY

If a bond or additional bond is required in an order confirming sale of real estate, the court must not file the order until the additional bond is filed.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.207 BONDS OF CONSERVATORS AND GUARDIANS

(a) [Bond includes reasonable amount for recovery on the bond] Except as otherwise provided by statute, every conservator or guardian of the estate must furnish a bond that includes an amount determined under (b) as a reasonable amount for the cost of recovery to collect on the bond under Probate Code section 2320(c)(4).

(Subd (a) amended effective January 1, 2010.)

(b) [Amount of bond for the cost of recovery on the bond] The reasonable amount of bond for the cost of recovery to collect on the bond, including attorney's fees and costs, under Probate Code section 2320(c)(4) is:

(1) Ten percent (10%) of the value up to and including $500,000 of the following:

(A) The value of personal property of the estate;

(B) The value, less encumbrances, of real property of the estate that the guardian or conservator has the independent power to sell without approval or confirmation of the court under Probate Code sections 2590 and 2591(d);

(C) The probable annual income from all assets of the estate; and

(D) The probable annual gross payments described in Probate Code section 2320(c)(3); and

(2) Twelve percent (12%) of the value above $500,000 up to and including $1,000,000 of the property, income, and payments described in (1); and

(3) Two percent (2%) of the value above $1,000,000 of the property, income, and payments described in (1).

(Subd (b) amended and relettered effective January 1, 2010; adopted as subd (c).)

Rule 7.207 amended effective January 1, 2010; adopted effective January 1, 2008.

CHAPTER 6
INDEPENDENT ADMINISTRATION OF ESTATES

7.250 REPORT OF ACTIONS TAKEN UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

(a) [Report required] In any accounting, report, petition for preliminary distribution, or petition for final distribution, the petitioner must list and describe all actions taken without prior court approval under the Independent Administration of Estates Act (IAEA) if notice of the proposed action was required. The description of the action must include the following:

(1) The nature of the action;

(2) When the action was taken;

(3) A statement of when and to whom notice was given;

(4) Whether notice was waived, and if so, by whom; and

(5) Whether any objections were received.

(Subd (a) amended effective January 1, 2002.)

(b) [Actions reported in previous reports] An action taken under the IAEA that was (1) properly listed and described in a prior accounting, report, or petition for distribution, and (2) approved by the court, need not be listed and described in a subsequent account, report, or petition for distribution.

(Subd (b) amended effective January 1, 2007.)

Adopted effective January 1, 2000; amended effective January 1, 2007; previously amended effective January 1, 2002.

CHAPTER 7
SPOUSAL PROPERTY PETITIONS

7.301 SPOUSAL OR DOMESTIC PARTNER PROPERTY PETITION FILED WITH PETITION FOR PROBATE

A petition for spousal domestic partner property determination or confirmation must be filed separately from a petition for probate of will or for letters of administration, even if both petitions are filed at the same time. The two petitions must be filed under the same case number.

Adopted effective January 1, 2000; amended effective January 1, 2007; previously amended effective January 1, 2002.

CHAPTER 8
PETITIONS FOR INSTRUCTIONS [RESERVED]

CHAPTER 9
CREDITORS' CLAIMS

7.401 PERSONAL REPRESENTATIVE'S ACTION ON THE CLAIM

For each creditor's claim filed with the court, the personal representative (whether or not acting under the Independent Administration of Estates Act (IAEA)) must:

(1) Allow or reject in whole or in part the claim in writing;

(2) Serve a copy of the allowance or rejection on the creditor and the creditor's attorney; and

(3) File a copy of the allowance or rejection with proof of service with the court.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.402 COURT'S ACTION ON THE CLAIM

Except as to claims of the personal representative or the attorney, if the personal representative has authority to act under the Independent Administration of Estates Act (IAEA), the court must not act on the personal representative's allowance or rejection of a creditor's claim unless good cause is shown.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.403 LISTING ALL CLAIMS IN THE FINAL REPORT

For each claim presented, the personal representative must state in the final report or petition for final distribution:

(1) The claimant's name;

(2) The date of filing of the claim;

(3) The nature of the claim;

(4) The amount claimed;

(5) The disposition of the claim; and

(6) If the claim was rejected, the date of service of the rejection and whether or not a lawsuit was filed.

Adopted effective January 1, 2000; amended effective January 1, 2002.

CHAPTER 10
SALES OF REAL AND PERSONAL PROPERTY

7.451 REFUSAL TO SHOW PROPERTY TO PROSPECTIVE BUYERS

Upon a showing that the fiduciary has denied any bona fide prospective buyer or his or her broker a reasonable opportunity to inspect the property, the court must not confirm the sale but must continue the sale to allow inspection unless good cause is shown for the court to confirm the sale.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.452 PETITIONER OR ATTORNEY REQUIRED AT HEARING

The court must not proceed with the hearing on a petition to confirm a sale of property unless the petitioner's attorney or

petitioner, if unrepresented, is present.

Adopted effective January 1, 2000; amended effective January 1, 2002.

7.453 PETITION FOR EXCLUSIVE LISTING

A petition for approval of an exclusive listing under Probate Code section 10150(c) must state the following:

(1) A description of the property to be sold;

(2) The name of the broker to be employed;

(3) A summary of the terms of the exclusive listing agreement or include a copy of the listing agreement; and

(4) A detailed statement of the facts supporting the "necessity and the advantage" to the estate of having the exclusive listing.

Adopted effective January 1, 2000; amended January 1, 2002.

7.454 EX PARTE APPLICATION FOR ORDER AUTHORIZING SALE OF SECURITIES OR OTHER PERSONAL PROPERTY

An ex parte application for authority to sell or to surrender tangible or intangible personal property must state whether or not the property is specifically devised. If it is specifically devised, the written consent of the specific devisee to the sale or surrender must be filed.

Adopted effective January 1, 2003.

CHAPTER 11
INVENTORY AND APPRAISAL

7.501 INVENTORY AND APPRAISAL TO SHOW SUFFICIENCY OF BOND

(a) [Statement required] Every Inventory and Appraisal must contain one of the following statements:

(1) "Bond is waived."

(2) "Bond has been filed in the amount of $ (specify amount) and is insufficient."

(3) "Bond has been filed in the amount of $ (specify amount) and is sufficient."

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2002.)

(b) [Insufficient bond] If the bond is insufficient, the fiduciary (the personal representative, or the guardian or conservator of the estate), or the attorney for the fiduciary, must immediately make ex parte application as provided in rule *7.204* for an order increasing the amount of the bond.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(c) [Statement signed by attorney] The statement required by (a) must be signed by the attorney of record for each fiduciary who has an attorney of record and by each fiduciary who does not.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

Adopted effective January 1, 2000; amended effective January 1, 2007; previously amended effective January 1, 2002 and January 1, 2003.

CHAPTER 12
ACCOUNTS AND REPORTS OF EXECUTORS, ADMINISTRATORS, CONSERVATORS, AND GUARDIANS

7.550 EFFECT OF WAIVER OF ACCOUNT

(a) [Waiver of account] Except as provided in (b), if an accounting is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report required under section 10954(c)(1).

(Subd (a) amended effective January 1, 2007; adopted as part of unlettered subdivision, effective January 1, 2003; previously amended effective January 1, 2004.)

(b) [Information required in report on waiver of account] The report required when an account has been waived must list the information required by law, including information as to:

(1) Creditors' claims;

(2) Sales, purchases, or exchanges of assets;

(3) Changes in the form of assets;

(4) Assets on hand;

(5) Whether the estate is solvent;

(6) Detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions);

(7) Costs of administration (if reimbursement of these costs is requested);

(8) The amount of any fees or commissions paid or to be paid; and

(9) The calculation of such fees or commissions as described in rule 7.705; and

(10) For decedent's estate proceedings commenced on or after August 18, 2003, the information required by subdivisions (a) and (b) of rule 7.552.

(Subd (b) amended January 1, 2007; adopted as part of unlettered subdivision effective January 1, 2003; previously amended effective January 1, 2004.)

Amended effective January 1, 2004; adopted effective January 1, 2003.

7.551 FINAL ACCOUNTS OR REPORTS IN ESTATES WITH NONRESIDENT BENEFICIARIES

(a) [Final account] Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than $1,000,000 and from which more than $250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(b) [Final report] If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(c) [Expiration date of certificate] If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Adopted effective January 1, 2004.

7.552 GRADUATED FILING FEE ADJUSTMENTS FOR ESTATES COMMENCED ON OR AFTER AUGUST 18, 2003, AND BEFORE JANUARY 1, 2008

This rule applies to decedents' estate proceedings commenced on or after August 18, 2003, and before January 1, 2008. Rule 7.553 applies to decedents' estate proceedings commenced on or after January 1, 2008.

(a) [Separate schedule for graduated fee information] The final account or report filed in every decedent's estate proceeding commenced on or after August 18, 2003, and before January 1, 2008, must include a separate schedule showing the following information:

(1) The name of each petitioner on the first-filed Petition for Probate (form DE-111) in the proceeding;

(2) The date the first-filed *Petition for Probate* was filed in the proceeding;

(3) The estimated value of the estate shown in item 3, "estimated value of the estate for filing fee purposes," of the first-filed *Petition for Probate* in the proceeding;

(4) The filing fee paid by or for the petitioner on the first-filed *Petition for Probate* in the proceeding; and

(5) The following information from the inventories filed in the proceeding:

(A) The date each partial, supplemental, final, or corrected Inventory and Appraisal (form DE-160/GC-040) was filed;

(B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal;*

(C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal;* and

(D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.

(6) A statement of the amount of filing fee that would have been payable under Government Code section 70650, as amended effective on the date the first-filed *Petition for Probate* was filed in the proceeding, if the total actual appraised value of the estate had been used as the estimated value for filing fee purposes (the "corrected filing fee");

(7) Calculation of the difference between the estimated filing fee paid under Government Code section 70650 on filing the first *Petition for Probate* in the proceeding (the "estimated filing fee") and the "corrected filing fee," as determined under (6) and subdivision (e) of this rule; and

(8) The following information concerning filing fee reimbursement payments made by a personal representative in the proceeding under rule 7.151:

(A) The amount of each payment;

(B) The date each payment was made; and

(C) The name, address, and telephone number of the payee and of any attorney of record for the payee in the proceeding.

(Subd (a) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(b) [If estimated filing fee less than corrected filing fee] If the estimated filing fee is less than the corrected filing fee, as determined under (a) and (e), the petition filed with the final account or report must allege that the difference between them has been paid to the clerk of the court. A copy of the clerk's receipt for the payment, and, if applicable, a receipt or other evidence satisfactory to the court of payment of the reimbursement required under rule 7.151, must be attached as an exhibit to the account or report.

(c) [If estimated filing fee more than corrected filing fee]

(1) Subject to the provisions of rule 7.151, if the estimated filing fee is more than the corrected filing fee, as determined under (a) and (e), the personal representative of the decedent's estate is eligible under this subdivision to receive a refund of the difference between them, without interest.

(2) The personal representative must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.

(3) Unless authorized to retain a reserve against closing expenses that expressly is to include the court's refund payment after the personal representative's discharge, the personal representative must not apply for a discharge while an application for refund of filing fee under this subdivision is pending and before the court's refund payment is received.

(d) [Refund on voluntarily dismissed *Petition for Probate*]

(1) A petitioner that files a *Petition for Probate* on or after August 18, 2003, and voluntarily dismisses the petition at any time within 90 days after it is filed and before an order granting or denying the petition is filed, is eligible under this subdivision to receive a refund, without interest, of all filing fees paid in excess of the filing fees that would have been payable on the original filing date for a *Petition for Probate* of an estate valued at less than $250,000.

(2) The petitioner on a dismissed *Petition for Probate* under (1) must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.

(Subd (d) amended effective March 1, 2008.)

(e) [Additional adjustment in corrected filing fee in insolvent estates] If the property of the estate is insufficient to pay the expenses of administration in full, the court may approve a determination of the corrected filing fee that reflects the proportionate reduction of those expenses under Probate Code section 11420. The corrected filing fee may not be reduced below the minimum fee required by Government Code section 70650 on the date the estimated fee was paid.

(Subd (e) amended effective March 1, 2008.)

(f) [Sample schedule of graduated fee information] The schedule of graduated fee information required under (a) may be substantially as follows:

SCHEDULE __
Graduated Filing Fee Information

1. The first-filed Petition for Probate in this proceeding was filed on [Date] by [name of each petitioner].

2. The estimated value of the estate for filing fee purposes shown on the first-filed Petition for Probate in this proceeding is $_____.

3. The filing fee paid by or for the petitioners on the first-filed Petition for Probate in this proceeding was $_____.

4. The following inventories have been filed in this proceeding:

Type	**Date Filed**	**Appraised Value**
[Partial no. __]	[09/30/09]	**$**
[Partial no. __]		**$**
Final		**$**
[Supplemental]		**$**
[Correcting]		$ (or $)_____
Total appraised value of estate		$ _____

5. Corrected Filing Fee:

Total appraised value of estate:	$
Filing fee as of the date in 1 above, based on total appraised value of estate:	$
Adjustment to reflect proportional reduction of expenses of administration for insolvent estate under Cal. Rules of Court, rule 7.552(e):	($ _____)
Corrected Filing Fee:	$ _____

6. Difference between estimated and corrected filing fee:

Estimated filing fee from 3 above:	$
Corrected filing fee from 5 above:	($ _____)
Difference:	$ (or $) _____

7. Filing fee reimbursements under rule 7.151:

Payee(s)	**Date Paid**	**Amount**
[Name, address, and telephone number of each payee and attorney of record in the proceeding]	[10/25/09]	**$**

(Subd (f) amended effective March 1, 2008; previously amended effective January 1, 2007.)

Amended effective March 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.

7.553 GRADUATED FILING FEE STATEMENTS FOR DECEDENTS' ESTATES COMMENCED ON OR AFTER JANUARY 1, 2008

This rule applies to decedents' estates commenced on or after January 1, 2008.

(a) [Separate schedule for graduated fee information] The final account or report or petition for final distribution filed in every decedent's estate proceeding commenced on or after January 1, 2008, must include a separate schedule showing the following information:

(1) The date the first-filed Petition for Probate (form DE-111) was filed in the proceeding; and

(2) The following information from the inventories filed in the proceeding:

(A) The date each partial, supplemental, final, or corrected Inventory and Appraisal (form DE-160/GC-040) was filed;

(B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal;*

(C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal;* and

(D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.

(b) [Adjustment in corrected filing fee in insolvent estates] If the property of the estate is insufficient to pay expenses of

administration in full, the court may approve a determination of the corrected filing fee under this rule that reflects the proportionate reduction of those expenses under Probate Code section 11420. The corrected filing fee may not be reduced below the minimum fee required by Government Code section 70650 on the date the estate was commenced.

(c) [Sample schedule of filing fee information] The schedule of graduated fee information required under (a) may be substantially as follows:

SCHEDULE __
Graduated Filing Fee Information

1. The first-filed Petition for Probate in this proceeding was filed on [Date] by [name of each petitioner].

2. The following inventories have been filed in this proceeding:

Type	**Date Filed**	**Appraised Value**
[Partial no. __]	[09/30/09]	**$**
[Partial no. __]		**$**
Final		**$**
[Supplemental]		**$**
[Correcting]		$ (or $)_____
Total appraised value of estate		$ _____

3. Graduated Filing Fee:

Total appraised value of estate:	$
Filing fee as of the date in 1 above, based on total appraised value of estate:	$
Adjustment to reflect proportional reduction of expenses of administration for insolvent estate under Cal. Rules of Court, rule *7.553*(b):	($ _____)
Corrected Filing Fee:	$ _____

Adopted effective March 1, 2008.

7.575 ACCOUNTS OF CONSERVATORS AND GUARDIANS

This rule defines standard and simplified accountings filed by conservators and guardians under Probate Code section 2620(a), provides when each type of accounting must or may be filed, and prescribes the use of Judicial Council accounting forms in both types of accountings.

(a) [Standard and simplified accountings] A standard accounting lists receipts and disbursements in subject-matter categories, with each receipt and disbursement category subtotaled. A simplified accounting lists receipts and disbursements chronologically, by receipt or payment date, without subject-matter categories.

(b) [Standard accounting authorized or required] A conservator or guardian may file any accounting required or authorized by Probate Code section 2620 as a standard accounting under this rule and must file a standard accounting if:

(1) The estate contains income real property;

(2) The estate contains a whole or partial interest in a trade or business;

(3) The appraised value of the estate is $500,000 or more, exclusive of the conservatee's or ward's personal residence;

(4) Except as provided in (c), Schedule A (receipts) or Schedule C (disbursements) prepared in a simplified accounting format exceeds five pages in length; or

(5) The court directs that a standard accounting be filed.

(c) [Simplified accounting authorized] A conservator or guardian may file a simplified accounting in all cases not listed in (b). If required by this rule to file a standard accounting only because a receipts or disbursements schedule is longer than five pages under (b)(4), a conservator or guardian may file a simplified accounting, except for that schedule, which must be prepared in a standard accounting format.

(d) [Standard and simplified accounting forms] Judicial Council forms designated as GC-400 are standard accounting forms.

Forms designated as GC-405 are simplified accounting forms. Forms designated as GC-400/GC-405 are forms for both standard and simplified accountings. Each form is also designated by a suffix following its accounting designator that identifies the form's intended use, based either on the form's schedule letter as shown in the Summary of Account (form GC-400(SUM)/GC-405(SUM)) or the form's subject matter.

(e) [Mandatory and optional forms]

(1) Judicial Council accounting forms adopted as mandatory forms must be used by standard and simplified accounting filers. Judicial Council accounting forms approved as optional forms may be used by all accounting filers. Judicial Council accounting forms designated as GC-400/GC-405 that are approved as optional forms may be used by standard accounting filers but must be used by simplified accounting filers.

(2) Standard accounting filers electing not to use optional Judicial Council accounting forms must:

(A) State receipts and disbursements in the subject-matter categories specified in the optional Judicial Council forms for receipts and disbursements schedules;

(B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required by the applicable Judicial Council accounting form; and

(C) Provide the information in the same general layout as the applicable Judicial Council accounting form, but instructional material contained in the form and material contained or requested in the form's header and footer need not be provided.

(f) [Required information in all accounts] Notwithstanding any other provision of this rule and the Judicial Council accounting forms, all standard and simplified accounting filers must provide all information in their accounting schedules or their Summary of Account that is required by Probate Code sections 1060-1063 and must provide all information required by Probate Code section 1064 in the petition for approval of their account or the report accompanying their account.

Adopted effective January 1, 2008.

CHAPTER 13
TAXES [RESERVED]

CHAPTER 14
PRELIMINARY AND FINAL DISTRIBUTIONS

7.650 DECREE OF DISTRIBUTION ESTABLISHING TESTAMENTARY TRUSTS

(a) [Determining the trust] Upon distribution, the court must:

(1) Determine whether or not a valid trust has been created by the will;

(2) Determine the terms of the trust; and

(3) Order distribution of the trust property to the trustee.

(b) [Terms of the trust] The order for distribution must incorporate the terms of the trust so as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions must be stated in the present tense and in the third person instead of quoting the will verbatim.

Adopted effective January 1, 2000; amended January 1, 2002.

7.651 DESCRIPTION OF PROPERTY IN PETITION FOR DISTRIBUTION

(a) [Property description] A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated in the petition by reference. If an account is filed with the petition, the description must be included in a schedule in the account.

(b) [Specific description requirements] The description under (a) must:

(1) Include the amount of cash on hand;

(2) Indicate whether promissory notes are secured or unsecured, and describe in detail the security interest of any secured notes;

(3) Include the complete legal description, street address (if any), and assessor's parcel number (if any) of real property; and

(4) Include the complete description of each individual security held in "street name" in security brokers' accounts.

Adopted effective January 1, 2004.

7.652 ALLEGATIONS IN PETITION FOR DISTRIBUTION CONCERNING CHARACTER OF PROPERTY

(a) [Required allegations] If the character of property to be distributed may affect the distribution, a petition for distribution must allege:

(1) The character of the property to be distributed, whether separate, community, or quasi-community; and

(2) That the community or quasi-community property to be distributed is either the decedent's one-half interest only, or the entire interest of the decedent and the decedent's spouse.

(b) [Compliance with Probate Code section 13502] If any property is to be distributed outright to the surviving spouse, a written election by the surviving spouse that complies with Probate Code section 13502 must have been filed, and the petition must show the filing date of the election.

Adopted effective January 1, 2004.

CHAPTER 15
COMPENSATION OF PERSONAL REPRESENTATIVES AND ATTORNEYS
(Amended effective January 1, 2003)

7.700 COMPENSATION PAID IN ADVANCE

(a) [No compensation in advance of court order] The personal representative must neither pay nor receive, and the attorney for the personal representative must not receive, statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment.

(b) [Surcharge for payment or receipt of advance compensation] In addition to removing the personal representative and imposing any other sanctions authorized by law against the personal representative or the attorney for the personal representative, the court may surcharge the personal representative for payment or receipt of statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment. The surcharge may include interest at the legal rate from the date of payment.

Adopted effective January 1, 2003.

7.701 ALLOWANCE ON ACCOUNT OF STATUTORY COMPENSATION

The court may authorize an allowance of statutory fees or commissions on account before approval of the final account and the decree of final distribution. Any allowance made before settlement of the final account must be low enough to avoid the possibility of overpayment. The allowance:

(1) Must be based on the estimated amount of statutory compensation payable on the estate determined as of the date of the petition for allowance;

(2) Must be in proportion to the work actually performed; and

(3) Must be based upon a detailed description of the ordinary services performed and remaining to be performed.

Adopted effective January 1, 2003.

7.702 PETITION FOR EXTRAORDINARY COMPENSATION

A petition for extraordinary compensation must include, or be accompanied by, a statement of the facts upon which the petition is based. The statement of facts must:

(1) Show the nature and difficulty of the tasks performed;

(2) Show the results achieved;

(3) Show the benefit of the services to the estate;

(4) Specify the amount requested for each category of service performed;

(5) State the hourly rate of each person who performed services and the hours spent by each of them;

(6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent; and

(7) State the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of a final account or report.

Adopted effective January 1, 2003.

(a) [Discretion of the court] An award of extraordinary compensation to the personal representative or to the attorney for the personal representative is within the discretion of the court. The court may consider the amount of statutory compensation when determining compensation for extraordinary services.

(b) [Examples of extraordinary services by personal representative] The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the personal representative:

(1) Selling, leasing, exchanging, financing, or foreclosing real or personal property;

(2) Carrying on decedent's business if necessary to preserve the estate or under court order;

(3) Preparing tax returns; and

(4) Handling audits or litigation connected with tax liabilities of the decedent or of the estate.

(c) [Examples of extraordinary services by attorney] The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the attorney for the personal representative:

(1) Legal services in connection with the sale of property held in the estate;

(2) Services to secure a loan to pay estate debts;

(3) Litigation undertaken to benefit the estate or to protect its interests;

(4) Defense of the personal representative's account;

(5) Defense of a will contested after its admission to probate;

(6) Successful defense of a will contested before its admission to probate;

(7) Successful defense of a personal representative in a removal proceeding;

(8) Extraordinary efforts to locate estate assets;

(9) Litigation in support of attorney's request for extraordinary compensation, where prior compensation awards are not adequate compensation under all the circumstances;

(10) Coordination of ancillary administration; and

(11) Accounting for a deceased, incapacitated, or absconded personal representative under Probate Code section 10953.

(d) [Contingency fee agreement for extraordinary legal services] An attorney may agree to perform extraordinary services for a personal representative on a contingent-fee basis on the following conditions:

(1) The agreement must be in writing and must comply with section 6147 of the Business and Professions Code.

(2) The court must approve the agreement in the manner provided in Probate Code section 10811(c), based on findings that the compensation under the agreement is just and reasonable, that the agreement is to the advantage of the estate, and that the agreement is in the best interest of the persons interested in the estate.

(3) In the absence of an emergency or other unusual circumstances, the personal representative must obtain the court's approval of the contingency fee agreement before services are performed under it.

(Subd (d) amended effective January 1, 2007.)

(e) [Use of paralegals in the performance of extraordinary services] Extraordinary legal services may include the services of a paralegal acting under the direction and supervision of an attorney. A request for extraordinary legal fees for a paralegal's services must:

(1) Describe the qualifications of the paralegal (including education, certification, continuing education, and experience);

(2) State the hours spent by the paralegal and the hourly rate requested for the paralegal's services;

(3) Describe the services performed by the paralegal;

(4) State why it was appropriate to use the paralegal's services in the particular case; and

(5) Demonstrate that the total amount requested for the extraordinary services of the attorney and the paralegal does not exceed

the amount appropriate if the attorney had performed the services without the paralegal's assistance.

Adopted effective January 1, 2003; amended effective January 1, 2007.

7.704 APPORTIONMENT OF STATUTORY COMPENSATION

(a) [One statutory commission and fee] There is one statutory commission for ordinary services by the personal representative of the estate and one statutory attorney fee for ordinary legal services to the personal representative, regardless of the number of personal representatives or attorneys performing the services. The court may apportion statutory commissions and fees among multiple, successive, and concurrent personal representatives or attorneys. The apportionment must be based on the agreement of the multiple personal representatives or attorneys or, if there is no agreement, according to the services actually rendered by each of them.

(b) [Notice of hearing] If there has been a change of personal representative or a substitution of attorneys for the personal representative, notice of hearing of any interim or final petition seeking or waiving an award of statutory compensation must be given to all prior personal representatives or attorneys unless:

(1) A waiver of notice executed by all prior personal representatives or attorneys is on file or is filed with the petition;

(2) A written, signed agreement on the allocation of statutory commissions or fees between the present personal representative or attorney and all prior personal representatives or attorneys is on file or is included in or filed with the petition; or

(3) The court's file and the petition demonstrate that the commissions or fees of the prior personal representatives or attorneys have been previously provided for and allowed by the court.

Adopted effective January 1, 2003.

7.705 CALCULATION OF STATUTORY COMPENSATION

(a) [Account filed] A petition for statutory commissions or attorney fees must state the amount of statutory compensation payable and set forth the estate accounted for and the calculation of statutory compensation. The calculation must be stated in the petition in substantially the following form:

COMMISSION OR FEE BASE	
Inventory and Appraisal	$_____
Receipts, excluding Principal	$_____
Gains on Sales	$_____
Losses on Sales	$(_____)
TOTAL COMMISSION OR FEE BASE	$_____

COMMISSION OR FEE COMPUTATION		
4% on first $100,000	($_____)[1]	$_____[2]
3% on next $100,000	($_____)	$_____
2% on next $800,000	($_____)	$_____
1% on next $9,000,000	($_____)	$_____
½ of 1% on next $15,000,000	($_____)	$_____
Amount requested from the court for estates above $25,000,000	($_____)	$_____
TOTAL COMMISSION OR FEE		$_____[3]

[1] Enter in this column the amount of the estate accounted for in each category. The sum of the entries in this column would equal the total commission or fee base.

[2] Enter in this column the product of the amount of the estate accounted for in each category multiplied by the percentage for that category.

[3] Enter here the sum of the products entered in this column.

(b) [Account waived] When an account has been waived, the report must contain the information required by rule 7.550. If the report is accompanied by a request for statutory commissions or fees, the basis for their computation must be included in the petition substantially in the form provided in (a). Notwithstanding the waiver of account, if the petition and report requests statutory commissions or fees based on any amount other than the amount of the Inventory and Appraisal, detailed schedules of receipts and gains and losses on sales must be included.

Adopted effective January 1, 2003.

7.706 COMPENSATION WHEN PERSONAL REPRESENTATIVE IS AN ATTORNEY

(a) [Personal representative's compensation only] Notwithstanding the provisions of the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation but may not receive compensation for legal services as the attorney for the personal representative unless the court approves the right to compensation for legal services in advance and finds the arrangement is to the advantage, benefit, and best interest of the decedent's estate.

(b) [Agreement not to participate in compensation] A law firm of which the personal representative is a partner or shareholder may request compensation for legal services in addition to the personal representative's compensation if a written agreement not to participate in each other's compensation, signed by the personal representative and by authorized representatives of the law firm, has been filed in the estate proceeding.

Adopted effective January 1, 2003.

7.707 APPLICATION OF COMPENSATION PROVISIONS

For proceedings commenced after June 30, 1991, the law in effect on the date of the court's order awarding statutory compensation determines the amount of such compensation.

Adopted effective January 1, 2003.

CHAPTER 16
COMPENSATION IN ALL MATTERS OTHER THAN DECEDENTS' ESTATES
(Amended effective January 1, 2003)

7.750 APPLICATION OF RULES TO GUARDIANSHIPS AND CONSERVATORSHIPS

The rules in this chapter apply to guardianships and conservatorships under Division 4 of the Probate Code (Prob. Code, §1400 et seq.) and to conservatorships under the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§5350-5371). They do not apply to guardianships under Chapter 2 of Division 2 of the Welfare and Institutions Code (Welf. & Inst. Code, §200 et seq.). Under Probate Code section 2646, the rules in this chapter applicable to guardianships and conservatorships apply only to compensation payable from the estate of the ward or conservatee or from money or property recovered or collected for the estate of the ward or conservatee.

Adopted effective January 1, 2003.

7.751 PETITIONS FOR ORDERS ALLOWING COMPENSATION FOR GUARDIANS OR CONSERVATORS AND THEIR ATTORNEYS

(a) [Petition for allowance of compensation for services performed before appointment of guardian or conservator] A petition for allowance of compensation to a guardian or conservator or to the attorney for a guardian or conservator may include a request for compensation for services rendered before an order appointing a guardian or conservator. The petition must show facts demonstrating the necessity for preappointment services.

(Subd (a) amended effective January 1, 2007.)

(b) [Required showing in petition for allowance of compensation] All petitions for orders fixing and allowing compensation must comply with the requirements of rule 7.702 concerning petitions for extraordinary compensation in decedents' estates, to the extent applicable to guardianships and conservatorships, except that the best interest of the ward or conservatee is to be considered instead of the interest of beneficiaries of the estate.

Adopted effective January 1, 2003; amended effective January 1, 2007.

7.752 COURT MAY ORDER ACCOUNTING BEFORE ALLOWING COMPENSATION

Notwithstanding the time period after which a petition may be filed for an allowance of compensation to a guardian, conservator, or an attorney for a guardian or conservator, the court may order the guardian or conservator to file an accounting before or at the time a petition for an allowance of compensation is filed or heard.

Adopted effective January 1, 2003.

7.753 CONTINGENCY FEE AGREEMENTS IN GUARDIANSHIPS AND CONSERVATORSHIPS

A guardian or conservator of the estate may contract with an attorney for a contingency fee for the attorney's services on behalf of the ward or conservatee, or the estate, in connection with a matter that is of a type customarily the subject of a contingency fee agreement, if the court has authorized the guardian or conservator to do so, or if the agreement has been approved by the court, under Probate Code section 2644. The agreement must also satisfy the requirements of rule 7.703(d)(1).

Adopted effective January 1, 2003.

7.754 USE OF PARALEGALS IN THE PERFORMANCE OF LEGAL SERVICES FOR THE GUARDIAN OR CONSERVATOR

An attorney for a guardian or conservator may use the services of a paralegal acting under the direction and supervision of the attorney. A request for an allowance of compensation for the services of a paralegal must satisfy the requirements of rule *7.703*(e).

Adopted effective January 1, 2003.

7.755 ADVANCE PAYMENTS AND PERIODIC PAYMENTS TO GUARDIANS, CONSERVATORS, AND TO THEIR ATTORNEYS ON ACCOUNT FOR FUTURE SERVICES

(a) [No advance payments] A guardian or conservator must neither pay nor receive, and the attorney for a guardian or conservator must not receive, any payment from the estate of the ward or conservatee for services rendered in advance of an order of the court authorizing the payment. If an advance payment is made or received, the court may surcharge the guardian or conservator in the manner provided in rule *7.700*(b), in addition to removing the guardian or conservator or imposing any other sanction authorized by law on the guardian or conservator or on the attorney.

(b) [Periodic payments to attorneys on account] A guardian or conservator may request the court to authorize periodic payment of attorney fees on account of future services under Probate Code section 2643 on a showing of an ongoing need for legal services.

Adopted effective January 1, 2003.

Former rule *7.756*. Renumbered effective January 1, 2008

Rule *7.756* renumbered as rule *7.776* effective January 1, 2008.

7.756 COMPENSATION OF CONSERVATORS AND GUARDIANS

(a) [Standards for determining just and reasonable compensation] The court may consider the following nonexclusive factors in determining just and reasonable compensation for a conservator from the estate of the conservatee or a guardian from the estate of the ward:

(1) The size and nature of the conservatee's or ward's estate;

(2) The benefit to the conservatee or ward, or his or her estate, of the conservator's or guardian's services;

(3) The necessity for the services performed;

(4) The conservatee's or ward's anticipated future needs and income;

(5) The time spent by the conservator or guardian in the performance of services;

(6) Whether the services performed were routine or required more than ordinary skill or judgment;

(7) Any unusual skill, expertise, or experience brought to the performance of services;

(8) The conservator's or guardian's estimate of the value of the services performed; and

(9) The compensation customarily allowed by the court in the community where the court is located for the management of conservatorships or guardianships of similar size and complexity.

(b) [No single factor determinative] No single factor listed in (a) should be the exclusive basis for the court's determination of just and reasonable compensation.

(c) [No inflexible maximum or minimum compensation or maximum approved hourly rate] This rule is not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

Adopted effective January 1, 2008.

7.776 COMPENSATION OF TRUSTEES

In determining or approving compensation of a trustee, the court may consider, among other factors, the following:

(1) The gross income of the trust estate;

(2) The success or failure of the trustee's administration;

(3) Any unusual skill, expertise, or experience brought to the trustee's work;

(4) The fidelity or disloyalty shown by the trustee;

(5) The amount of risk and responsibility assumed by the trustee;

(6) The time spent in the performance of the trustee's duties;

(7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and

(8) Whether the work performed was routine, or required more than ordinary skill or judgment.

Adopted as rule 7.756 effective January 1, 2003; previously amended effective January 1, 2007; renumbered as rule 7.776 effective January 1, 2008.

CHAPTER 17
CONTESTED HEARINGS AND TRIALS

7.801 OBJECTIONS AND RESPONSES

If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.

Adopted effective January 1, 2000.

CHAPTER 18
DISCOVERY [RESERVED]

CHAPTER 19
TRUSTS

7.901 TRUSTEE'S ACCOUNTS

(a) [Period Covered] A trustee's account must state the period covered by the account.

(b) [First Account] The first account in a testamentary trust must reconcile the initial assets on hand with the decree of distribution of the estate.

(c) [Principal and Income] All trustee's accounts in a trust that distributes income to a beneficiary must allocate receipts and disbursements between (1) principal receipts and disbursements, and (2) income receipts and disbursements.

Adopted effective January 1, 2001; amended January 1, 2002.

7.902 BENEFICIARIES TO BE LISTED IN PETITIONS AND ACCOUNTS

A petition and account involving a trust must state the names and last known addresses of all vested or contingent beneficiaries, including all persons in being who may or will receive income or corpus of the trust, provided, however, that (1) during the time that the trust is revocable and the person holding the power to revoke the trust is competent, the names and last known addresses of beneficiaries who do not hold the power to revoke do not need to be stated, and (2) the petition or account does not need to state the name and last known address of any beneficiary who need not be given notice under Probate Code section 15804.

Adopted effective January 1, 2002; amended effective January 1, 2007.

7.903. TRUSTS FUNDED BY COURT ORDER

(a) [Definitions]

(1) "Trust funded by court order" under this rule means and refers to a trust that will receive funds under Probate Code section 2580 et seq. (substituted judgment); section 3100 et seq. (proceedings for particular transactions involving disabled spouses or registered domestic partners); or section 3600 et seq. (settlement of claims or actions or disposition of judgments involving minors or persons with disabilities).

(2) "Continuing jurisdiction of the court" under (b) means and refers to the court's continuing subject matter jurisdiction over trust proceedings under division 9 of the Probate Code (Prob. Code, §15000 et seq.).

(3) "Court supervision under the Probate Code" under (b) means and refers to the court's authority to require prior court approval or subsequent confirmation of the actions of the trustee as for the actions of a guardian or conservator of the estate under division 4 of the Probate Code (Prob. Code, §1400 et seq.).

(b) [Continuing jurisdiction and court supervision] The order creating or approving the funding of a trust funded by court order must provide that the trust is subject to the continuing jurisdiction of the court and may provide that the trust is to be

subject to court supervision under the Probate Code.

(c) [Required provisions in trust instruments] Except as provided in (d), unless the court otherwise orders for good cause shown, trust instruments for trusts funded by court order must:

(1) Not contain "no-contest" provisions;

(2) Prohibit modification or revocation without court approval;

(3) Clearly identify the trustee and any other person with authority to direct the trustee to make disbursements;

(4) Prohibit investments by the trustee other than those permitted under Probate Code section 2574;

(5) Require persons identified in (3) to post bond in the amount required under Probate Code section 2320 et seq.;

(6) Require the trustee to file accounts and reports for court approval in the manner and frequency required by Probate Code sections 1060 et seq. and 2620 et seq.;

(7) Require court approval of changes in trustees and a court order appointing any successor trustee; and

(8) Require compensation of the trustee, the members of any advisory committee, or the attorney for the trustee, to be in just and reasonable amounts that must be fixed and allowed by the court. The instrument may provide for periodic payments of compensation on account, subject to the requirements of Probate Code section 2643 and rule 7.755.

(Subd (c) amended effective January 1, 2007; previously amended effective July 1, 2005.)

(d) [Trust instruments for smaller trusts] Unless the court otherwise orders for good cause shown, the requirements of (c)(5)-(8) of this rule do not apply to trust instruments for trusts that will have total assets of $20,000 or less after receipt of the property ordered by the court.

Adopted effective January 1, 2005; amended effective January 1, 2007; previously amended effective July 1, 2005.

CHAPTER 20
MINORS' CLAIMS

7.950 PETITION FOR COURT APPROVAL OF THE COMPROMISE OF, OR A COVENANT ON, A DISPUTED CLAIM; A COMPROMISE OR SETTLEMENT OF A PENDING ACTION; OR THE DISPOSITION OF THE PROCEEDS OF A JUDGMENT

A petition for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 of the Probate Code (commencing with section 3600) or Code of Civil Procedure section 372 must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise, covenant, settlement, or disposition. Except as provided in rule 7.950.5, the petition must be prepared on a fully completed Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability (form MC-350).

Rule 7.950 amended effective January 1, 2010; adopted effective January 1, 2002; previously amended effective January 1, 2007.

7.950.5 EXPEDITED PETITION FOR COURT APPROVAL OF THE COMPROMISE OF, OR A COVENANT ON, A DISPUTED CLAIM; A COMPROMISE OR SETTLEMENT OF A PENDING ACTION; OR THE DISPOSITION OF THE PROCEEDS OF A JUDGMENT

(a) [Authorized use of expedited petition] Notwithstanding the provisions of rule 7.950, a petitioner for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 of the Probate Code (commencing with section 3600) or Code of Civil Procedure section 372 may, in the following circumstances, satisfy the information requirements of that rule by fully completing the Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability (form MC-350EX):

(1) The petitioner is represented by an attorney authorized to practice in the courts of this state;

(2) The claim is not for damages for the wrongful death of a person;

(3) No portion of the net proceeds of the compromise, settlement, or judgment in favor of the minor or disabled claimant is to be placed in a trust;

(4) There are no unresolved disputes concerning liens to be satisfied from the proceeds of the compromise, settlement, or

judgment;

(5) The petitioner's attorney did not become involved in the matter at the direct or indirect request of a person against whom the claim is asserted or an insurance carrier for that person;

(6) The petitioner's attorney is neither employed by nor associated with a defendant or insurance carrier in connection with the petition;

(7) If an action has been filed on the claim:

(A) All defendants that have appeared in the action are participating in the compromise; or

(B) The court has finally determined that the settling parties entered into the settlement in good faith;

(8) The judgment for the minor or disabled claimant (exclusive of interest and costs) or the total amount payable to the minor or disabled claimant and all other parties under the proposed compromise or settlement is $50,000 or less or, if greater:

(A) The total amount payable to the minor or disabled claimant represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties; and

(B) All proposed contributing parties would be substantially unable to discharge an adverse judgment on the minor's or disabled person's claim from assets other than the proceeds of their liability insurance policies; and

(9) The court does not otherwise order;

(b) [Determination of expedited petition] An expedited petition must be determined by the court not more than 35 days after it is filed, unless a hearing is requested, required, or scheduled under (c) or the time for determination is extended for good cause by order of the court.

(c) [Hearing on expedited petition]

(1) The expedited petition must be determined by the court without a hearing unless a hearing is requested by the petitioner at the time the expedited petition is filed, an objection or other opposition to the petition is filed by an interested party, or a hearing is scheduled by the court under (2) or (3).

(2) The court may on its own motion elect to schedule and conduct a hearing on an expedited petition. The court must make its election to schedule the hearing and must give notice of its election and the date, time, and place of the hearing to the petitioner and all other interested parties not more than 25 days after the date the expedited petition is filed.

(3) If the court decides not to grant an expedited petition in full as requested, it must schedule a hearing and give notice of its intended ruling and the date, time, and place of the hearing to the petitioner and all other interested parties within the time provided in (2).

Rule 7.950.5 adopted effective January 1, 2010.

7.951 DISCLOSURE OF THE ATTORNEY'S INTEREST IN A PETITION TO COMPROMISE A CLAIM

If the petitioner has been represented or assisted by an attorney in preparing the petition to compromise the claim or in any other respect with regard to the claim, the petition must disclose the following information:

(1) The name, state bar number, law firm, if any, and business address of the attorney;

(2) Whether the attorney became involved with the petition, directly or indirectly, at the instance of any party against whom the claim is asserted or of any party's insurance carrier;

(3) Whether the attorney represents or is employed by any other party or any insurance carrier involved in the matter;

(4) Whether the attorney has received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, and, if so, the amounts and the identity of the person who paid the fees or other compensation;

(5) If the attorney has not received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, whether the attorney expects to receive any fees or other compensation for these services, and, if so, the amounts and the identity of the person who is expected to pay the fees or other compensation; and

(6) The terms of any agreement between the petitioner and the attorney.

Adopted effective January 1, 2002.

7.952 ATTENDANCE AT HEARING ON THE PETITION TO COMPROMISE A CLAIM

(a) [Attendance of the petitioner and claimant] The person compromising the claim on behalf of the minor or person with a disability and the minor or person with a disability must attend the hearing on the compromise of the claim unless the court for good cause dispenses with their personal appearance.

(Subd (a) amended effective January 1, 2007.)

(b) [Attendance of the physician and other witnesses] At the hearing, the court may require the presence and testimony of witnesses, including the attending or examining physician.

Adopted effective January 1, 2002; amended effective January 1, 2007.

7.953 ORDER FOR THE DEPOSIT OF FUNDS OF A MINOR OR A PERSON WITH A DISABILITY

(a) [Acknowledgment of receipt by financial institution] In any case in which the court orders that funds to be received by a minor or a person with a disability must be deposited in a financial institution and not disbursed without further order of the court, the order must include a provision that a certified or filed endorsed copy of the order must be delivered to a manager at the financial institution where the funds are to be deposited, and that a receipt from the financial institution must be promptly filed with the court, acknowledging receipt of both the funds deposited and the order for deposit of funds.

(Subd (a) amended effective January 1, 2007.)

(b) [Order permitting the withdrawal of funds by a former minor] If, in the order approving the compromise of a minor's claim, there is a finding that the minor will attain the age of majority on a definite date, the order for deposit may require that the depository permit the withdrawal of funds by the former minor after that date, without further order of the court.

Adopted effective January 1, 2002; amended effective January 1, 2007.

7.954 PETITION FOR THE WITHDRAWAL OF FUNDS DEPOSITED FOR A MINOR OR A PERSON WITH A DISABILITY

(a) [Verified petition required] A petition for the withdrawal of funds deposited for a minor or a person with a disability must be verified and must include the identity of the depository, a showing of the amounts previously withdrawn, a statement of the balance on deposit at the time of the filing of the petition, and a justification for the withdrawal.

(Subd (a) amended effective January 1, 2007.)

(b) [Ex parte or noticed hearing] A petition for the withdrawal of funds may be considered ex parte or set for a hearing at the discretion of the court.

Adopted effective January 1, 2002; amended effective January 1, 2007.

7.955 ATTORNEY'S FEES FOR SERVICES TO A MINOR OR A PERSON WITH A DISABILITY

(a) [Reasonable attorney's fees]

(1) In all cases under Code of Civil Procedure section 372 or Probate Code sections 3600-3601, unless the court has approved the fee agreement in advance, the court must use a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability.

(2) The court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor or person with a disability and must evaluate the agreement based on the facts and circumstances existing at the time the agreement was made, except where the attorney and the representative of the minor or person with a disability contemplated that the attorney's fee would be affected by later events.

(Subd (a) amended and lettered effective January 1, 2010; adopted as unlettered subd.)

(b) [Factors the court may consider in determining a reasonable attorney's fee] In determining a reasonable attorney's fee, the court may consider the following nonexclusive factors:

(1) The fact that a minor or person with a disability is involved and the circumstances of that minor or person with a disability.

(2) The amount of the fee in proportion to the value of the services performed.

(3) The novelty and difficulty of the questions involved and the skill required to perform the legal services properly.

(4) The amount involved and the results obtained.

(5) The time limitations or constraints imposed by the representative of the minor or person with a disability or by the

circumstances.

(6) The nature and length of the professional relationship between the attorney and the representative of the minor or person with a disability.

(7) The experience, reputation, and ability of the attorney or attorneys performing the legal services.

(8) The time and labor required.

(9) The informed consent of the representative of the minor or person with a disability to the fee.

(10) The relative sophistication of the attorney and the representative of the minor or person with a disability.

(11) The likelihood, if apparent to the representative of the minor or person with a disability when the representation agreement was made, that the attorney's acceptance of the particular employment would preclude other employment.

(12) Whether the fee is fixed, hourly, or contingent.

(13) If the fee is contingent:

(A) The risk of loss borne by the attorney;

(B) The amount of costs advanced by the attorney; and

(C) The delay in payment of fees and reimbursement of costs paid by the attorney.

(14) Statutory requirements for representation agreements applicable to particular cases or claims.

(Subd (b) adopted effective January 1, 2010.)

(c) [Attorney's declaration] A petition requesting court approval and allowance of an attorney's fee under (a) must include a declaration from the attorney that addresses the factors listed in (b) that are applicable to the matter before the court.

(Subd (c) adopted effective January 1, 2010.)

(d) [Preemption] The Judicial Council has preempted all local rules relating to the determination of reasonable attorney's fees to be awarded from the proceeds of a compromise, settlement, or judgment under Probate Code sections 3600-3601. No trial court, or any division or branch of a trial court, may enact or enforce any local rule concerning this field, except a rule pertaining to the assignment or scheduling of a hearing on a petition or application for court approval or allowance of attorney's fees under sections 3600-3601. All local rules concerning this field are null and void unless otherwise permitted by a statute or a rule in the California Rules of Court.

(Subd (d) adopted effective January 1, 2010.)

Rule 7.955 amended effective January 1, 2010; adopted effective January 1, 2003; previously amended effective January 1, 2007.

Advisory Committee Comment: This rule requires the court to approve and allow attorney's fees in an amount that is reasonable under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of existing law concerning attorney's fees under a contingency fee agreement when the fees must be approved by the court. The facts and circumstances that the court may consider are discussed in a large body of decisional law under section 3601 and under other statutes that require the court to determine reasonable attorney's fees. The factors listed in rule 7.955(b) are modeled after those provided in rule 4-200 of the Rules of Professional Conduct of the State Bar of California concerning an unconscionable attorney's fee, but the advisory committee does not intend to suggest or imply that an attorney's fee must be found to be unconscionable under rule 4-200 to be determined to be unreasonable under this rule.

The rule permits, but does not require, the court to allow attorney's fees in an amount specified in a contingency fee agreement. The amount of attorney's fees allowed by the court must meet the reasonableness standard of section 3601 no matter how they are determined.

CHAPTER 21
GUARDIANSHIPS

7.1001 GUARDIAN SCREENING FORM

(a) [Screening form to be submitted with petition] Each proposed probate guardian, except a public guardian, or a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of guardian a completed *Confidential Guardian Screening Form* (form GC-212).

(b) [Use of form] The information on the *Confidential Guardian Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed guardian should be appointed.

(c) [Form to be confidential] The *Confidential Guardian Screening Form* and the information contained on the form are confidential. The clerk must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2002.)

Adopted effective January 1, 2001; amended effective January 1, 2007; previously amended effective January 1, 2002.

7.1002 ACKNOWLEDGMENT OF RECEIPTS OF *DUTIES OF GUARDIAN*

Before the court issues letters, each guardian must execute and file an acknowledgment of receipt of the *Duties of Guardian* (form GC-248).

Adopted effective January 1, 2001; amended effective January 1, 2007; previously amended effective January 1, 2002.

7.1003 CONFIDENTIAL GUARDIANSHIP STATUS REPORT FORM

(a) [Due date of status report] Each guardian required by the court to complete, sign, and file the status report authorized by Probate Code section 1513.2 must file the completed and signed report no later than one month after the anniversary of the date of the order appointing him or her as guardian. Co-guardians may sign and file their reports jointly.

(b) [Court clerk's duties] The clerk of each court that requires guardians to file the status report authorized by Probate Code section 1513.2 must:

(1) Determine the annual due date for the completed report from each appointed guardian required to file the report;

(2) Fill in the due date for the completed report, in the space provided in the form for that purpose, on each blank copy of the form that must be mailed to appointed guardians under (3); and

(3) Mail by first class mail to each appointed guardian no later than one month prior to the date the status report is due under (a) a blank copy of *Confidential Guardianship Status Report* (form GC-251), for each child under guardianship under the same case number.

(Subd (b) amended effective January 1, 2007.)

Adopted effective January 1, 2004; amended effective January 1, 2007.

7.1004 TERMINATION OF GUARDIANSHIP

(a) [Operation of law or court order] A guardianship of the person or estate of a minor may terminate by operation of law or may be terminated by court order where the court determines that it would be in the ward's best interest to terminate the guardianship.

(b) [Guardian of the person] Under Probate Code section 1600 a guardianship of the person terminates by operation of law, and the guardian of the person need not file a petition for its termination, when the ward attains majority, dies, is adopted, or is emancipated.

(c) [Duty of guardian of estate on termination] A guardian of the estate whose administration is terminated by operation of law or court order must file and obtain the court's approval of a final account or report of the administration.

Adopted effective January 1, 2004.

7.1005 SERVICE OF COPY OF FINAL ACCOUNT OR REPORT AFTER RESIGNATION OR REMOVAL OF GUARDIAN

A resigned or removed guardian of the estate must serve a copy of the guardian's final account or report and the petition for its settlement, with the notice of hearing that must be served on the successor guardian of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Adopted effective January 1, 2004.

7.1006 SERVICE OF COPY OF FINAL ACCOUNT ON TERMINATION OF GUARDIANSHIP

(a) [Minor living] In addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a copy of the guardian's final account and petition for its settlement on the minor, unless the court dispenses with such service.

(b) [Personal representative of deceased minor] If the minor is deceased, in addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the personal representative of the deceased minor's estate, unless the court dispenses with such service.

(c) [Successors in interest to deceased minor] If the minor is deceased and no personal representative of the minor's estate has been appointed or qualified or if the personal representative of the minor's estate is also the guardian, on termination of the guardianship, in addition to the notices of hearing required under Probate Code section 1460(b), the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the persons entitled to succeed to the deceased minor's estate, unless the court dispenses with such service.

Adopted effective January 1, 2004.

7.1007 SETTLEMENT OF ACCOUNTS AND RELEASE BY FORMER MINOR

(a) [Release of guardian of estate by ward after majority] A ward who has attained majority may settle accounts with his or her guardian of the estate and may give a valid release to the guardian if the court determines, at the time of the hearing on the final account, or on the final report and petition for termination on waiver of account, that the release has been obtained fairly and without undue influence. The release is not effective to discharge the guardian until one year after the ward has attained majority.

(b) [Appearance of ward] The court may require the personal appearance of the ward at the hearing on the final account or report of the guardian of the estate after termination of the guardianship.

Adopted effective January 1, 2004.

7.1008 VISITATION BY FORMER GUARDIAN AFTER TERMINATION OF GUARDIANSHIP

(a) [Visitation order at time of termination of guardianship] Subject to the provisions of Welfare and Institutions Code section 304, a guardian may request the court to order visitation with the child under guardianship at the time of termination of the guardianship either in the guardian's petition for termination or in the guardian's objections or other pleading filed in response to the petition of another party for termination. The court may then order visitation if it is in the best interest of the child.

(b) [Request for visitation after termination of guardianship] If no order was entered under (a) concerning visitation between the former guardian and the former ward at termination of the guardianship and no dependency proceedings for the child are pending, the former guardian may request the court to order visitation with the former ward after termination of the guardianship as provided in Family Code section 3105, Probate Code section 1602, rule 5.475, and this rule, as follows:

(1) If either parent of the former ward is living, in an independent action for visitation under the Family Code; or

(2) If neither parent of the former ward is living, in a guardianship proceeding under the Probate Code, including a proceeding commenced for that purpose.

(c) [Declaration under UCCJEA] A guardian or former guardian requesting visitation under this rule must file a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) with his or her request for visitation.

(Subd (c) amended effective January 1, 2007.)

(d) [Transmission of visitation order] Following the termination of the guardianship the clerk of the superior court issuing the visitation order concerning the guardian or former guardian and the ward or former ward must promptly transmit an endorsed filed copy of the order to the superior court of the county where a custody proceeding under the Family Code is pending or, if none, to the superior court of the county in which the custodial parent resides. An order transmitted to the court in the county where the custodial parent resides may be sent to the receiving court's Court Operations Manager, Family Division, or similar senior manager or clerk responsible for the operations of the family law departments of the court. If the receiving court has more than one location, the order may be sent to the main or central district of the court.

Adopted effective January 1, 2006; amended effective January 1, 2007.

7.1009 STANDARDS OF CONDUCT FOR THE GUARDIAN OF THE ESTATE

Except as otherwise required by statute, in the exercise of ordinary care and diligence in managing and controlling the estates of the ward, the guardian of the estate is to be guided by the following principles:

(a) Avoidance of actual and apparent conflicts of interest with the ward The guardian must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the ward, the appearance of conflicts of interest. The guardian must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the ward. In particular:

(1) Except as appropriate for guardians who are not professional fiduciaries with full disclosure to the court, the guardian should not personally provide medical or legal services to the ward;

(2) The guardian must be independent from all service providers, except when (a) no other guardian or service providers are reasonably available, (b) the exception is in the best interest of the ward, (c) the circumstances are fully disclosed to the court, and

(d) prior court approval has been obtained;

(3) The guardian must neither solicit nor accept incentives from service providers; and

(4) The guardian must not engage his or her family members to provide services to the ward for a profit or fee when other alternatives are reasonably available. Where family members do provide such services, their relationship to the guardian must be fully disclosed to the court, the terms of engagement must be in the best interest of the ward compared to the terms available from independent service providers, the services must be competently performed, and the guardian must be able to exercise appropriate control and supervision.

A guardian's employees, including family members, are not service providers and are not providing services to the ward for a profit or fee within the meaning of this rule if their compensation is paid by the guardian and their services are either included in the guardian's petition for allowance of the guardian's compensation or are not paid from the ward's estate.

(b) Guardianship estate management In addition to complying with applicable standards of estate management specified in rule 7.1059(b), the guardian of the estate must:

(1) Manage the estate primarily for the ward's long-term benefit if the ward has a parent available who can provide sufficient support;

(2) If it would be in the best interest of the ward and the estate, consider requesting court authority to support the ward from the estate if the ward does not have a parent available who can provide sufficient support.

Adopted effective January 1, 2008.

Advisory Committee Comment

The Probate and Mental Health Advisory Committee consulted with several organizations in the development of rule 7.1009, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. In developing this rule, the Probate and Mental Heath Advisory Committee considered the National Guardianship Association's Standards of Practice. Some of these standards have been incorporated into the rule.

7.1010 QUALIFICATIONS AND CONTINUING EDUCATION REQUIREMENTS FOR PRIVATE PROFESSIONAL GUARDIANS

(a) [Definitions] For purposes of this rule:

(1) An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

(2) The term "developmental disability" has the meaning specified in Probate Code section 1420.

(3) Unless the context otherwise requires, the term "guardian" refers to a guardian of the person, of the estate, or of both, appointed by a court in a guardianship proceeding under Division 4 of the Probate Code (commencing with section 1400).

(4) A "Lanterman-Petris-Short conservatorship" is a conservatorship of a person who is gravely disabled as the result of a mental disorder or impairment by chronic alcoholism under Welfare and Institutions Code section 5350 et seq.

(5) The term "private professional guardian" has the meaning specified in Probate Code section 2341(b), including a guardian of one unrelated minor whom an appointing court has required to comply with article 4 of chapter 4 of part 4 of division 4 of that code (commencing with section 2340).

(6) An "unrelated minor" is a person under the age of majority who is not related to a private professional guardian by blood, marriage, or domestic partnership.

(b) [Qualifications for appointment] Except as otherwise provided in this rule, effective January 1, 2006, a court may not appoint a private professional guardian as guardian of the estate or guardian of the person and estate of an unrelated minor unless on the date of the order of appointment, the private professional guardian:

(1) Is at least 21 years of age;

(2) Satisfies one or more of the following subparagraphs:

(A) Has a four-year undergraduate degree or equivalent from an accredited educational institution and one of the following:

(i) Two or more years' employment experience in a position with responsibility for the care or management of the persons or estates of children or dependent, developmentally disabled, or mentally ill adults, or supervision of those caring for or assisting them, (1) in a nonprofit corporation or public agency of the federal government or any state, city, or county; (2) in a bank or corporation authorized under the law of any state to engage in the business of a trust company; or (3) in a nonprofit corporation or with a professional fiduciary or organization of professional fiduciaries acting as a court-appointed fiduciary under the law of

any state;

(ii) Two or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state; or

(iii) A certificate as a paralegal from an accredited educational institution and two or more years' employment experience as a paralegal with a primary emphasis in probate-related areas of practice.

(B) Has a two-year undergraduate degree or equivalent in a behavioral science, business, nursing, or accounting from an accredited educational institution and one of the following:

(i) Five or more years' employment experience in a position and with an entity or individual described in (A)(i);

(ii) Five or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state; or

(iii) A certificate as a paralegal from an accredited educational institution and five or more years' employment experience as a paralegal with a primary emphasis in probate-related areas of practice;

(C) Has been appointed, qualified, and acted as guardian of the estate or of the person and estate, or as conservator of the person, of the estate, or of both, of 10 or more persons in the state of California in the five-year period immediately preceding January 1, 2006;

(D) Has a current, active license in good standing, or an inactive license that was current, active, and in good standing within five years of the later of the effective date of this rule or the date of appointment as a private professional guardian and was neither revoked, nor resigned or surrendered with proceedings for revocation pending, to practice one of the following professions in the State of California:

(i) Attorney at law;

(ii) Certified public accountant;

(iii) Educational psychologist;

(iv) Licensed clinical social worker;

(v) Marriage and family therapist;

(vi) Physician or surgeon;

(vii) Psychologist; or

(viii) Registered nurse; or

(E) Is one of the following retired judicial officers of a California trial or appellate court:

(i) A judge or justice of a trial or appellate court; or

(ii) A commissioner or juvenile court referee who was employed by a court in that capacity on a full-time basis at the time of his or her retirement;

(3) Has either:

(A) Satisfied the requirements of (2)(C); or

(B) Received the Certificate in Fiduciary Management for Conservators from University Extended Education, California State University, Fullerton, or a certificate from an equivalent program in professional fiduciary management for guardians or conservators from an accredited educational institution approved by the Administrative Office of the Courts; and

(4) Has not:

(A) Been convicted of any felony, or of a misdemeanor involving abuse or neglect of a child or an elderly or dependent adult;

(B) Been determined to be liable in a civil action or proceeding for conversion, embezzlement, fraud, misappropriation, misrepresentation, or theft; or

(C) Been removed as a fiduciary by a court for actions involving breach of fiduciary duty, conversion, fraud, misappropriation, misrepresentation, or theft.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2006.)

(c) [Discretionary exception for small counties]

(1) Notwithstanding any other provision of this rule, a court in a county that has five or fewer private professional guardians or conservators, as determined under (2), who have been appointed as a private professional fiduciary in at least one guardianship or conservatorship matter that is then open and active in that court may, in the exercise of the court's discretion, appoint a private professional guardian who does not meet any of the requirements of (b)(2) and (3) on conditions satisfactory to the court, if the court determines that it is necessary to appoint a private professional guardian in a particular case.

(2) The court must determine the number of private professional guardians or conservators active in its county at the time of the proposed discretionary appointment authorized under (1) by checking the latest annual information statements required by Probate Code section 2342 that are on file with the court as of the date of the proposed appointment, and reviewing the guardianship or conservatorship matters listed in the statements to confirm their status as open and active on that date.

(d) [Transitional provisions for qualifications]

(1) *Completion of education requirements in 2006 and 2007*

(A) During 2006 and 2007, the court may, in the exercise of its discretion, appoint as guardian of the estate, or of the person and estate, of an unrelated minor a private professional guardian who does not satisfy the prior experience requirement of (b)(2)(C) or the education requirement of (b)(3)(B) on the date of appointment.

(B) A private professional guardian appointed under (A) must complete the education requirement of (b)(3)(B) and provide a certificate or other proof of completion satisfactory to the court before July 1, 2007.

(C) The court must remove a private professional guardian appointed under (A) who fails to timely comply with (B).

(2) *Guardianships pending on January 1, 2006*

(A) The court may, in the exercise of its discretion, permit a private professional guardian who was appointed and qualified as a guardian of the estate, or the person and estate, of an unrelated minor before January 1, 2006, to continue as guardian after that date on conditions approved by the court, although the guardian does not on that date satisfy the qualifications specified in (b)(2).

(B) A private professional guardian permitted to continue as guardian under (A) may apply to the court for removal of any conditions imposed by the court at any time after January 1, 2006, that he or she becomes qualified under (b)(2)(A), (B), or (D) and satisfies the education requirement of (b)(3)(B).

(Subd (d) amended effective January 1, 2007.)

(e) [Continuing education]

(1) *Annual time requirements*

Beginning on January 1, 2007, except as provided in (i) and (j), every private professional guardian must complete during each calendar year a minimum of 15 hours of continuing education from eligible providers under this rule.

(A) A maximum of 4 of the 15 hours required by this paragraph may be by self-study under the supervision of an eligible continuing education provider that provides evidence of completion.

(B) A private professional guardian may complete continuing education courses that satisfy the requirements of this subdivision offered by eligible continuing education providers by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(C) A private professional guardian who serves as an instructor in a continuing education course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction.

(2) *Annual subject matter requirements*

(A) At least 5 hours of continuing education each year must be in subjects appropriate for a guardian of the person.

(B) At least 5 hours of continuing education each year must be in subjects appropriate for a guardian of the estate.

(C) At least 1 hour of continuing education each year must be in fiduciary ethics.

(3) *Subject matter for guardians of the person*

"Subjects appropriate for a guardian of the person" under (2) include the following:

(A) Assessment of child abuse issues;

(B) Child custody and visitation issues in guardianships;

(C) Community resources;

(D) Developmental disabilities;

(E) Interfamilial relationships and conflict resolution, with emphases on parent-child relationships and on blended and extended families;

(F) Interstate issues in guardianships of the person of minors;

(G) Involuntary mental health evaluation and additional treatment for mentally ill children;

(H) Lanterman-Petris-Short conservatorships;

(I) Mandatory reporting requirements for child abuse;

(J) Medical decision making by guardians;

(K) Minors' rights to mental health treatment or counseling services;

(L) Probate Code and other California legal requirements for guardianships of the person;

(M) Psychological and developmental needs of children;

(N) Recognizing and evaluating mental illnesses in children; and

(O) Significance of culture and religion in the lives of children.

(4) *Subject matter for guardians of the estate*

"Subjects appropriate for a guardian of the estate" under (2) include the following:

(A) Asset recovery;

(B) Court accounting;

(C) Economics of fiduciary services;

(D) Enforcing a child's right to support;

(E) Evaluation of investment securities;

(F) Fiduciary liability;

(G) Fiduciary office management and technology;

(H) Income taxation;

(I) Interstate issues in guardianships of the estate of minor children;

(J) Investment and other advisors for fiduciaries;

(K) Liability insurance;

(L) Litigation by and against guardians;

(M) Medi-Cal, Supplemental Security Income, and other public benefits;

(N) Medical insurance;

(O) Personal property asset management;

(P) Probate Code and other California legal requirements for probate guardianships of the estate;

(Q) Prudent Investor Act and authorized investments by guardians;

(R) Real property asset management;

(S) Recordkeeping;

(T) Risk management;

(U) Settlement of the claim or disposition of the proceeds of a judgment for a minor;

(V) Special needs trusts; and

(W) Any subject not listed in this paragraph that is identified as appropriate for a conservator of the estate in rule 7.1060(e)(4).

(5) *Continuing education for dual-status private professional fiduciaries*

Notwithstanding any other provision of this rule and rule 7.1060, a private professional guardian under this rule who also is a private professional conservator under rule 7.1060 may satisfy the minimum-hours requirements of both rules by completing a total of at least 15 hours of continuing education annually from eligible providers under either rule.

(Subd (e) amended effective January 1, 2007.)

(f) [Approved eligible continuing education providers]

(1) Eligible continuing education providers may include accredited education institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(2) Continuing education completed in 2007 and through June 30, 2008, complies with the requirements of this rule if it addresses the subjects required by this rule, is certified for continuing education credit by the provider in accordance with the requirements of subdivision (g), and is provided by:

(A) An accredited educational institution;

(B) An accountancy organization or a private education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;

(C) The Administrative Office of the Courts;

(D) The American Bar Association;

(E) California Continuing Education of the Bar;

(F) A local bar association or private education provider, if the education qualifies with the California State Bar for continuing legal education credit for a member of the California bar;

(G) The National Association of Social Workers;

(H) The National Guardianship Association; or

(I) The Professional Fiduciary Association of California.

(Subd (f) amended effective January 1, 2007.)

(g) [Requirements for continuing education providers] Each continuing education provider must:

(1) Ensure that the instructors teaching continuing education courses are qualified to teach the subject matter of the courses they teach;

(2) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;

(3) Keep records of attendance or self-study and distribute to each participant a certificate of completion that identifies the education provider and documents the subject taught, the number of hours of education offered, and the number of hours the participant completed; and

(h) [Proof of compliance]

(1) *(Qualifications)* Every private professional guardian must demonstrate, under penalty of perjury, his or her qualifications under (b) in his or her information statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after the effective date of this rule and annually thereafter, through June 30, 2008.

(2) (Continuing education)

(A) Every private professional guardian must declare, under penalty of perjury, that he or she has complied with the continuing education requirements under (e) for the previous calendar year in each annual statement filed with the clerk of each appointing court after December 31, 2007, under Probate Code section 2342.

(B) Every private professional guardian must retain certificates of attendance or other proof of participation in continuing education required by this rule for a period of three years after the end of each year of education completed under this rule. An

appointing court may require a private professional guardian to produce, in a manner determined by the court, proof of compliance with the requirement for any year at any time within that three-year period.

(3) *(Report of noncompliance to the Statewide Registry)* If an appointing court determines that a private professional guardian has failed to comply with the qualification or continuing education requirements of this rule, the court clerk must forward a copy of the court's determination to the Statewide Registry under Probate Code section 2850(d).

(Subd (h) amended effective January 1, 2007.)

(i) [Waiver of continuing education] Notwithstanding any other provision of this rule, a court may, on the ground of hardship, waive the continuing education requirements of (e), in whole or in part and under conditions satisfactory to the court, for any private professional guardian appointed by the court.

(j) [Discretion concerning certain guardians of the person] Notwithstanding any other provision of this rule, in the exercise of its discretion, a court that requires a guardian of the person to comply with article 4 of chapter 4 of part 4 of the Probate Code (commencing with section 2340) because the guardian receives compensation may exempt that guardian from some or all of the requirements of this rule.

(Subd (j) amended effective July 1, 2006.)

(k) [Expiration date] This rule is repealed effective July 1, 2008.

(Subd (k) amended effective January 1, 2007.)

Adopted effective January 1, 2006; amended effective January 1, 2007; previously amended effective July 1, 2006.

7.1011 TAKING POSSESSION OF AN ASSET OF THE WARD AT AN INSTITUTION OR OPENING OR CHANGING OWNERSHIP OF AN ACCOUNT OR SAFE-DEPOSIT BOX IN A FINANCIAL INSTITUTION

(a) [Definitions] As used in this rule, the following terms have the meanings stated below:

(1) An "institution" is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a guardianship that is not a "financial institution" within the meaning of this rule;

(2) A "financial institution" is a bank, trust (except as provided in (d)), savings and loan association, savings bank, industrial bank, or credit union; and

(3) "Taking possession" or "taking control" of an asset held or controlled by an institution includes changing title to the asset, withdrawing all or any portion of the asset, or transferring all or any portion of the asset from the institution.

(b) [Responsibilities of the guardian when taking possession or control of an asset of the ward at an institution] When taking possession or control of an asset held by an institution in the name of the ward, the temporary or general guardian of the estate must provide the following to the institution:

(1) A certified copy of the guardian's Letters of Temporary Guardianship or Conservatorship (form GC-150) or Letters of Guardianship (form GC-250) containing the Notice to Institutions and Financial Institutions on the second page; and

(2) A blank copy of a Notice of Taking Possession or Control of an Asset of Minor or Conservatee (form GC-050).

(c) [Responsibilities of the guardian when opening or changing the name on an account or a safe-deposit box in a financial institution] When opening or changing the name on an account or a safe-deposit box in a financial institution, the temporary or general guardian of the estate must provide the following to the financial institution:

(1) A certified copy of the guardian's Letters of Temporary Guardianship or Conservatorship (form GC-150) or Letters of Guardianship (form GC-250) containing the Notice to Institutions and Financial Institutions on the second page; and

(2) A blank copy of a Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box (form GC-051).

(d) [Application of this rule to trust arrangements] This rule applies to Totten trust accounts but does not apply to any other trust arrangement described in Probate Code section 82(b).

Adopted effective January 1, 2009.

7.1012 THE GOOD CAUSE EXCEPTION TO NOTICE OF THE HEARING ON A PETITION FOR APPOINTMENT OF A TEMPORARY GUARDIAN

(a) [Purpose] The purpose of this rule is to establish uniform standards for the good cause exception to the notice of the hearing required on a petition for appointment of a temporary guardian under Probate Code section 2250(e).

(Subd (a) amended effective January 1, 2009.)

(b) [Good cause for exceptions to notice limited] Good cause for an exception to the notice required by section 2250(e) must be based on a showing that the exception is necessary to protect the proposed ward or his or her estate from immediate and substantial harm.

(Subd (b) amended effective January 1, 2009.)

(c) [Court may waive or change the time or manner of giving notice] An exception to the notice requirement of section 2250(e) may include one or any combination of the following:

(1) Waiving notice to one, more than one, or all persons entitled to notice;

(2) Requiring a different period of notice; and

(3) Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or a combination of these methods, instead of notice by personal delivery to the proposed ward's parents or to a person with a visitation order.

(Subd (c) amended effective January 1, 2009.)

(d) [Good cause exceptions to notice] Good cause for an exception to the notice requirement of section 2250(e) may include a showing of:

(1) Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the ward or the ward's estate that could occur during the notice period.

(2) Harm that one or more persons entitled to notice might do to the proposed ward, including abduction; or harm to the proposed ward's estate if notice to those persons is given. Such a showing would not support an exception to the requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.

(3) The death or incapacity of the proposed ward's custodial parent and the petitioner's status as the custodial parent's nominee.

(4) Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary guardian is appointed and (2) cannot be deferred for the notice period because of the proposed ward's pain or extreme discomfort or a significant risk of harm.

(5) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed ward's estate or loss of support for the proposed ward during the notice period.

(Subd (d) amended effective January 1, 2009.)

(e) [Contents of request for good cause exception to notice]

(1) When the temporary guardianship petition is prepared on the Petition for Appointment of Temporary Guardian (form GC-110), a request for a good cause exception to the notice requirement of section 2250(e) must be in writing, separate from the petition for appointment of a temporary guardian, and must include:

(A) An application containing the case caption and stating the relief requested;

(B) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;

(C) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b); and

(D) A proposed order.

(2) When the temporary guardianship petition is prepared on the Petition for Appointment of Temporary Guardian of the Person (form GC-110(P)), a request for a good cause exception to the notice requirement of section 2250(e) may be included in the petition.

(Subd (e) amended effective January 1, 2009.)

Amended effective January 1, 2009; adopted effective January 1, 2008.

7.1013 CHANGE OF WARD'S RESIDENCE

(a) [Pre-move notice of change of personal residence required] Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed

below at least 15 days before the date of the proposed change, and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

(1) The ward if he or she is 12 years of age or older;

(2) The attorney of record for the ward;

(3) The ward's parents;

(4) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;

(5) A guardian of the ward's estate; and

(6) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding.

(b) [Ward's personal residence] The "ward's personal residence" under (a) is the ward's residence when the first petition for appointment of a guardian was filed in the proceeding.

(c) [Post-move notice of a change of residence required] The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1) The ward's attorney of record;

(2) The ward's parents;

(3) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;

(4) A guardian of the ward's estate; and

(5) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding.

(d) [Ward's residence] The "ward's residence" under (c) is the ward's residence at any time after appointment of a guardian.

(e) [Use of Judicial Council forms GC-079 and GC-080]

(1) The Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward (form GC-079) must be used for the pre-move notice required under (a) and Probate Code section 2352(e)(3). The guardian, the guardian's attorney, or an employee of the attorney may complete the mailing and sign the proof of mailing on page 2 of the form. If the notice is mailed less than 15 days before the date of the move because an emergency requires a shorter period of notice, the basis for the emergency must be stated in the notice.

(2) The Post-Move Notice of Change of Residence of Conservatee or Ward (form GC-080) must be used for the post-move notice required under (c) and Probate Code section 2352(e)(1) and (2). The guardian, the guardian's attorney, or an employee of the attorney may complete the mailing and sign the proof of mailing on page 2 of the form.

(f) [Prior court approval required to establish ward's residence outside California] Notwithstanding any other provision of this rule, prior court approval is required before a ward's residence may be established outside the state of California.

Adopted effective January 1, 2008.

7.1015 INDIAN CHILD WELFARE ACT IN GUARDIANSHIP AND CERTAIN CONSERVATORSHIP PROCEEDINGS (PROB. CODE, §§ 1459.5, 1460.2)

(a) [Definitions] As used in this rule, unless the context or subject matter otherwise requires:

(1) "Act" means the Indian Child Welfare Act (25 United States Code sections 1901-1963).

(2) "Petitioner" means and refers to a petitioner for the appointment of a guardian of the person of a child or a petitioner for the appointment of a conservator of the person of a formerly married minor child.

(b) [Applicability of this rule and rules 5.480 through 5.487]

(1) This rule applies to the following proceedings under division 4 of the Probate Code when the proposed ward or conservatee

is an Indian child, within the meaning of the act:

(A) A guardianship of the person or the person and estate in which the proposed guardian of the person is not the proposed ward's natural parent or Indian custodian within the meaning of the act;

(B) A conservatorship of the person or the person and estate of a formerly married minor in which the proposed conservator is not a natural parent or Indian custodian of the minor and is seeking physical custody of the proposed conservatee.

(2) Unless the context otherwise requires, rules 5.480 through 5.487 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.487 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of the person of an Indian child and to an Indian child's appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a temporary or general guardian or conservator of the person of the child involved in a proceeding listed in (1), the duties and responsibilities of a petitioner under this rule are transferred to and become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner has concerning the child to the appointed guardian or conservator.

(c) [Notice] If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and Institutions Code section 224.3(b), that an Indian child is involved, the petitioner and the court must notify the child's parents or legal guardian and Indian custodian, and the Indian child's tribe, of the pending proceeding and the right of the tribe to intervene, as follows:

(1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed Notice of Child Custody Proceeding for Indian Child (form ICWA-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.

(2) The petitioner and his or her attorney, if any, must complete the Notice and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.

(3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) in the manner described in (1) and sign the declaration of mailing on the Notice.

(4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve the Notice in the manner described in (1) and sign the certificate of mailing on the Notice.

(5) The original of all Notices of Child Custody Proceeding for Indian Child (form ICWA-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.

(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

(7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the Notice, the additional tribes or bands may be listed on an Attachment to Notice of Child Custody Proceeding for Indian Child (form ICWA-030(A)).

(8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first hearing unless and until it is determined that the act does not apply to the proceeding.

(9) If, after a reasonable time following the service of notice under the act—but in no event less than 60 days—no determinative response to the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) is received, the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.

(10) If an Indian child's tribe intervenes in the proceeding, service of the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) is no longer required and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.

(11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.

(d) [Duty of inquiry]

(1) The court, a court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, a petitioner, and an appointed temporary or general guardian or conservator of the person of a minor child each have an affirmative and continuing duty to inquire whether the child involved in the matters identified in (b)(1) is or may be an Indian child.

(2) Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents or any other legal guardian, whether the child is or may be an Indian child, and must complete the Indian Child Inquiry Attachment (form ICWA-010(A)) and attach it to his or her petition.

(3) At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a Parental Notification of Indian Status (form ICWA-020) and deliver the completed form to the petitioner.

(4) If the parent, Indian custodian, or guardian does not personally appear at a hearing in a proceeding identified in (b)(1), the court may order the petitioner to use reasonable diligence to find and ask the parent, Indian custodian, or legal guardian to complete and deliver to petitioner a Parental Notification of Indian Status (form ICWA-020).

(5) If the court or county investigator, petitioner, appointed guardian or conservator, or the attorney for a petitioner or appointed guardian or conservator, knows or has reason to know that an Indian child is involved in the proceeding, he or she must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5) that is required to complete the Notice of Child Custody Proceeding for Indian Child (form ICWA-030);

(B) Contacting the U.S. Department of the Interior, Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership.

(6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.

(7) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or

(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

Adopted effective January 1, 2008.

CHAPTER 22
CONSERVATORSHIPS

7.1050 CONSERVATOR FORMS

(a) [Forms to be submitted with petition] Each petitioner, unless the petitioner is a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of conservator a completed *Confidential Supplemental Information* statement (form GC-312). In addition, each proposed conservator, except a bank or other entity entitled to conduct the business of a trust company, or a public guardian, must submit a completed *Confidential Conservator Screening Form* (form GC-314).

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2002.)

(b) [Use of form] The information on the *Confidential Conservator Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed conservator should be appointed.

(c) [Forms to be confidential] The *Confidential Conservator Screening Form*, the *Confidential Supplemental Information* form, and the information contained on these forms are confidential. The clerk must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2002.)

Adopted effective January 1, 2001; amended effective January 1, 2007; previously amended effective January 1, 2002.

7.1051 ACKNOWLEDGMENT OF RECEIPT OF RECEIPT OF *DUTIES OF CONSERVATOR*

Before the court issues letters, each conservator must execute and file an acknowledgment of receipt of the *Duties of Conservator and Acknowledgment of Receipt of Handbook* (form GC-348).

Adopted effective January 1, 2001; amended effective January 1, 2002.

7.1052 TERMINATION OF CONSERVATORSHIP

(a) [Operation of law or court order] A conservatorship of the person or estate may terminate by operation of law or may be terminated by court order if the court determines that it is no longer required.

(b) [Conservator of the person] Under Probate Code section 1860(a), a conservatorship of the person terminates by operation of law when the conservatee dies, and the conservator of the person need not file a petition for its termination.

(c) [Duty of conservator of estate on termination] A conservator of the estate whose administration is terminated by operation of law or by court order must file and obtain the court's approval of a final account of the administration.

Adopted effective January 1, 2004.

7.1053 SERVICE OF FINAL ACCOUNT OF REMOVED OR RESIGNED CONSERVATOR

A resigned or removed conservator of the estate must serve a copy of the conservator's final account and the petition for its settlement with the notice of hearing that must be served on the successor conservator of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Adopted effective January 1, 2004.

7.1054 SERVICE OF FINAL ACCOUNT AFTER TERMINATION OF CONSERVATORSHIP

After termination of the conservatorship, the conservator of the estate must serve copies of the conservator's final account and the petition for its settlement with the notices of hearing that must be served on the former conservatee and on the spouse or domestic partner of the former conservatee under Probate Code sections 1460(b)(2) and (3), unless the court dispenses with such service.

Adopted effective January 1, 2004.

7.1059 STANDARDS OF CONDUCT FOR THE CONSERVATOR OF THE ESTATE

Except as otherwise required by statute, in the exercise of ordinary care and diligence in managing and controlling the estate of the conservatee, the conservator of the estate is to be guided by the following principles:

(a) [Avoidance of actual and apparent conflicts of interest with the conservatee] The conservator must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the conservatee, the appearance of conflicts of interest. The conservator must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the conservatee. In particular:

(1) Except as appropriate for conservators who are not professional fiduciaries with full disclosure to the court, the conservator should not personally provide housing, medical, or legal services to the conservatee;

(2) The conservator must be independent from all service providers, except when (a) no other conservator or service providers are reasonably available, (b) the exception is in the best interest of the conservatee, (c) the circumstances are fully disclosed to the court, and (d) prior court approval has been obtained;

(3) The conservator must neither solicit nor accept incentives from service providers; and

(4) The conservator must not engage his or her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available. Where family members do provide such services, their relationship to the conservator must be fully disclosed to the court, the terms of engagement must be in the best interest of the conservatee compared to the terms available from independent service providers, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.

A conservator's employees, including family members, are not service providers and are not providing services to the conservatee for a profit or fee within the meaning of this rule if their compensation is paid by the conservator and their services are either included in the conservator's petition for allowance of the conservator's compensation or are not paid from the conservatee's estate.

(b) [Conservatorship estate management] The conservator of the estate must:

(1) Provide competent management of the conservatee's property, with the care of a prudent person dealing with someone else's property;

(2) Refrain from unreasonably risky investments;

(3) Refrain from making loans or gifts of estate property, except as authorized by the court after full disclosure;

(4) Manage the estate for the benefit of the conservatee;

(5) Subject to the duty of full disclosure to the court and persons entitled under law to receive it, closely guard against unnecessary or inappropriate disclosure of the conservatee's financial information;

(6) Keep the money and property of the estate separate from the conservator's or any other person's money or property, except as may be permitted under statutes authorizing public guardians or public conservators and certain regulated private fiduciaries to maintain common trust funds or similar common investments;

(7) Hold title reflecting the conservatorship in individual securities, mutual funds, securities broker accounts, and accounts with financial institutions;

(8) Keep accurate records of all transactions. Professional fiduciaries must maintain prudent accounting systems and procedures designed to protect against embezzlement and other cash-asset mismanagement;

(9) Undertake as soon as possible after appointment and qualification to locate and safeguard the conservatee's estate planning documents, including wills, living trusts, powers of attorney for health care and finances, life insurance policies, and pension records;

(10) Undertake as soon as possible after appointment and qualification to secure the real and personal property of the estate, insuring it at appropriate levels, and protecting it against damage, destruction, or loss;

(11) Make reasonable efforts to preserve property identified in the conservatee's estate planning documents;

(12) Communicate as necessary and appropriate with the conservator of the person of the conservatee, if any, and with the trustee of any trust of which the conservatee is a beneficiary;

(13) Pursue claims against others on behalf of the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting prior court authority to pursue or compromise large or complex claims, particularly those that might require litigation and the assistance of counsel and those that might result in an award of attorneys' fees for the other party against the estate if unsuccessful, and request such approval before entering into a contingent fee agreement with counsel;

(14) Defend against actions or claims against the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting court approval or instructions concerning the defense or compromise of litigation against the estate;

(15) Collect all public and insurance benefits for which the conservatee is eligible;

(16) Evaluate the conservatee's ability to manage cash or other assets and take appropriate action, including obtaining prior court approval when necessary or appropriate, to enable the conservatee to do so to the level of his or her ability;

(17) When disposing of the conservatee's tangible personal property, inform the conservatee's family members in advance and give them an opportunity to acquire the property, with approval or confirmation of the court; and

(18) In deciding whether it is in the best interest of the conservatee to dispose of property of the estate, consider the following factors, among others, as appropriate in the circumstances:

(A) The likely benefit or improvement of the conservatee's life that disposing of the property would bring;

(B) The likelihood that the conservatee would need or benefit from the property in the future;

(C) Subject to the factors specified in Probate Code section 2113, the previously expressed or current desires of the conservatee concerning the property;

(D) The provisions of the conservatee's estate plan concerning the property;

(E) The tax consequences of the disposition transaction;

(F) The impact of the disposition transaction on the conservatee's entitlement to public benefits;

(G) The condition of the entire estate;

(H) Alternatives to disposition of the property;

(I) The likelihood that the property will deteriorate or be subject to waste if retained in the estate; and

(J) The benefit versus the cost or liability of maintaining the property in the estate.

Adopted effective January 1, 2008.

Advisory Committee Comment

The Probate and Mental Health Advisory Committee consulted with several organizations in the development of rule 7.1059, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. In developing this rule, the Probate and Mental Heath Advisory Committee considered the National Guardianship Association's Standards of Practice. Some of these standards have been incorporated into the rules.

7.1060 QUALIFICATIONS AND CONTINUING EDUCATION REQUIREMENTS FOR PRIVATE PROFESSIONAL CONSERVATORS

(a) [Definitions] For purposes of this rule:

(1) An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

(2) Unless the context otherwise requires, the term "conservator" refers to a conservator of the person, of the estate, or of both, appointed by a court in a conservatorship proceeding under division 4 of the Probate Code (commencing with section 1400).

(3) The term "developmental disability" has the meaning specified in Probate Code section 1420.

(4) A "Lanterman-Petris-Short conservatorship" is a conservatorship of a person who is gravely disabled as the result of a mental disorder or impairment by chronic alcoholism under Welfare and Institutions Code section 5350 et seq.

(5) A "limited conservatorship" is a conservatorship of a developmentally disabled adult found by the court to lack the capacity to perform some but not all of the tasks necessary to provide for his or her own personal needs for physical health, food, clothing, or shelter, or manage his or her own financial resources.

(6) The term "private professional conservator" has the meaning specified in Probate Code section 2341(a), including a conservator of one unrelated person whom an appointing court has required to comply with article 4 of chapter 4 of part 4 of division 4 of that code (commencing with section 2340).

(7) An "unrelated person" is a person who is not related to a private professional conservator by blood, marriage, or domestic partnership.

(b) [Qualifications for appointment] Except as otherwise provided in this rule, effective January 1, 2006, a court may not appoint a private professional conservator as conservator of an unrelated person unless on the date of the order of appointment the private professional conservator:

(1) Is at least 21 years of age;

(2) Satisfies one or more of the following subparagraphs:

(A) Has a four-year undergraduate degree or equivalent from an accredited educational institution and one of the following:

(i) Two or more years' employment experience in a position with responsibility for the care or management of the persons or estates of children or dependent, developmentally disabled, or mentally ill adults, or supervision of those caring for or assisting them, (1) in a nonprofit corporation or public agency of the federal government or any state, city, or county; (2) in a bank or corporation authorized under the law of any state to engage in the business of a trust company; or (3) in a nonprofit corporation or with a professional fiduciary or organization of professional fiduciaries acting as a court-appointed fiduciary under the law of any state;

(ii) Two or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state; or

(iii) A certificate as a paralegal from an accredited educational institution and two or more years' employment experience as a paralegal with a primary emphasis in probate-related areas of practice;

(B) Has a two-year undergraduate degree or equivalent in a behavioral science, business, nursing, or accounting from an accredited educational institution and one of the following:

(i) Five or more years' employment experience in a position and with an entity or individual described in (A)(i);

(ii) Five or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state; or

(iii) A certificate as a paralegal from an accredited educational institution and five or more years' employment experience as a paralegal with a primary emphasis in probate-related areas of practice;

(C) Has been appointed, qualified, and acted as guardian of the estate, or of the person and estate, or conservator of the person, of the estate, or of both, of 10 or more persons in the State of California in the five-year period immediately preceding January 1, 2006;

(D) Has a current, active license in good standing, or an inactive license that was current, active, and in good standing within five years of the later of the effective date of this rule or the date of appointment as a private professional conservator and was neither revoked, nor resigned or surrendered with proceedings for revocation pending, to practice one of the following professions in the State of California:

(i) Attorney at law;

(ii) Certified public accountant;

(iii) Educational psychologist;

(iv) Licensed clinical social worker;

(v) Marriage and family therapist;

(vi) Physician or surgeon;

(vii) Psychologist; or

(viii) Registered nurse; or

(E) Is one of the following retired judicial officers of a California trial or appellate court:

(i) A judge or justice of a trial or appellate court; or

(ii) A commissioner or juvenile court referee who was employed by a court in that capacity on a full-time basis at the time of his or her retirement;

(3) Has either:

(A) Satisfied the requirements of (2)(C); or

(B) Received the Certificate in Fiduciary Management for Conservators from University Extended Education, California State University, Fullerton, or a certificate from an equivalent program in professional fiduciary management for guardians or conservators from an accredited educational institution approved by the Administrative Office of the Courts; and

(4) Has not:

(A) Been convicted of any felony, or of a misdemeanor involving abuse or neglect of a child or an elderly or dependent adult;

(B) Been determined to be liable in a civil action or proceeding for conversion, elder or dependent adult abuse or neglect, embezzlement, fraud, misappropriation, misrepresentation, or theft; or

(C) Been removed as a fiduciary by a court for actions involving breach of fiduciary duty, conversion, fraud, misappropriation, misrepresentation, or theft.

(Subd (b) amended effective January 1, 2007.)

(c) [Discretionary exception for small counties]

(1) Notwithstanding any other provision of this rule, a court in a county that has five or fewer private professional guardians or conservators, as determined under (2), who have been appointed as a private professional fiduciary in at least one guardianship or conservatorship matter that is then open and active in that court may, in the exercise of the court's discretion, appoint a private professional conservator who does not meet any of the requirements of (b)(2) and (3) on conditions satisfactory to the court, if the court determines that it is necessary to appoint a private professional conservator in a particular case.

(2) The court must determine the number of private professional guardians or conservators active in its county at the time of the proposed discretionary appointment authorized under (1) by checking the latest annual information statements required by Probate Code section 2342 that are on file with the court as of the date of the proposed appointment, and reviewing the guardianship or conservatorship matters listed in the statements to confirm their status as open and active on that date.

(d) [Transitional provisions for qualifications]

(1) *Completion of education requirements in 2006 and 2007*

(A) During 2006 and 2007, the court may, in the exercise of its discretion, appoint as conservator of an unrelated person a private professional conservator who does not satisfy the prior experience requirement of (b)(2)(C) or the education requirement of (b)(3)(B) on the date of appointment.

(B) A private professional conservator appointed under (A) must complete the education requirement of (b)(3)(B) and provide a certificate or other proof of completion satisfactory to the court before July 1, 2007.

(C) The court must remove a private professional conservator appointed under (A) who fails to timely comply with (B).

(2) *Conservatorships pending on January 1, 2006*

(A) The court may, in the exercise of its discretion, permit a private professional conservator who was appointed and qualified as a conservator of an unrelated person before January 1, 2006, to continue as conservator after that date on conditions approved by the court, although the conservator is not on that date qualified under subparagraph (b)(2).

(B) A private professional conservator permitted to continue as conservator under (A) may apply to the court for removal of any conditions imposed by the court at any time after January 1, 2006, that he or she becomes qualified under (b)(2)(A), (B), or (D) and satisfies the education requirement of (b)(3)(B).

(Subd (d) amended effective January 1, 2007.)

(e) [Continuing education]

(1) *Annual time requirements*

Beginning on January 1, 2007, except as provided in (i), every private professional conservator must complete during each calendar year a minimum of 15 hours of continuing education from eligible providers under this rule.

(A) A maximum of 4 of the 15 hours required by this paragraph may be by self-study under the supervision of an eligible continuing education provider that provides evidence of completion.

(B) A private professional conservator may complete continuing education courses that satisfy the requirements of this subdivision offered by eligible continuing education providers by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(C) A private professional conservator who serves as an instructor in a continuing education course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction.

(2) *Annual subject matter requirements*

(A) At least 5 hours of continuing education each year must be in subjects appropriate for a conservator of the person.

(B) At least 5 hours of continuing education each year must be in subjects appropriate for a conservator of the estate.

(C) At least 1 hour of continuing education each year must be in fiduciary ethics.

(3) *Subject matter for conservators of the person*

"Subjects appropriate for a conservator of the person" under (2) include the following:

(A) Advance directives and end-of-life decisions;

(B) Assessment of living situations;

(C) Communicating with adults with diminished capacity;

(D) Community resources;

(E) Dementia assessment;

(F) Dementia powers;

(G) Developmental disabilities;

(H) Due Process in Competency Determinations Act;

(I) Elder and dependent adult abuse or neglect and legal remedies;

(J) Evaluation of residential care facilities;

(K) Family dynamics and conflict resolution;

(L) Home care of adults with diminished capacity;

(M) Interstate issues in conservatorships of the person;

(N) Involuntary mental health evaluation and intensive treatment for gravely disabled adults;

(O) Lanterman-Petris-Short conservatorships;

(P) Limited conservatorships of the person of developmentally disabled persons;

(Q) Mandatory reporting requirements for elder and dependent adult abuse;

(R) Medical decision making by conservators;

(S) Medications for adults with diminished capacity;

(T) Physical and cognitive functional assessments;

(U) Probate Code and other California legal requirements for probate conservatorships of the person;

(V) Reading and understanding medical charts;

(W) Recognizing and evaluating mental illnesses;

(X) Regulation of residential care facilities;

(Y) Rights of residents and patients in residential, board-and-care, group living, and long-term care facilities; and

(Z) Working with other professionals.

(4) *Subject matter for conservators of the estate*

"Subjects appropriate for a conservator of the estate" under (2) include the following:

(A) Asset recovery;

(B) Court accounting;

(C) Economics of fiduciary services;

(D) Elder and dependent adult financial abuse and legal remedies;

(E) Evaluation of investment securities;

(F) Fiduciary liability;

(G) Fiduciary office management and technology;

(H) Income taxation;

(I) Interstate issues in conservatorships of the estate;

(J) Investment and other advisors for fiduciaries;

(K) Liability insurance;

(L) Limited conservatorships of the estate of developmentally disabled adults;

(M) Litigation by and against conservators;

(N) Marital and domestic partnership property issues in conservatorships;

(O) Medi-Cal, Supplemental Security Income, and other public benefits;

(P) Medicare and medical insurance;

(Q) Personal property asset management;

(R) Powers of attorney, abuses and remedies;

(S) Probate Code and other California legal requirements for probate conservatorships of the estate;

(T) The Prudent Investor Act and authorized investments by conservators;

(U) Real property asset management;

(V) Record keeping;

(W) Risk management;

(X) Special needs trusts; and

(Y) Substituted judgment.

(5) *Continuing education for dual-status private professional fiduciaries*

Notwithstanding any other provision of this rule and rule 7.1010, a private professional conservator under this rule who is also a private professional guardian under rule 7.1010 may satisfy the minimum-hours requirements of both rules by completing a total of at least 15 hours of continuing education annually from eligible providers under either rule.

(f) [Approved eligible continuing education providers]

(1) Eligible continuing education providers may include accredited educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(2) Continuing education completed in 2007 and through June 30, 2008, complies with the requirements of this rule if it addresses the subjects required by this rule, is certified for continuing education credit by the provider in accordance with the requirements of (g), and is provided by:

(A) An accredited educational institution;

(B) An accountancy organization or private education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;

(C) The Administrative Office of the Courts;

(D) The American Bar Association;

(E) The American Society of Aging;

(F) California Continuing Education of the Bar;

(G) The Gerontological Society of America;

(H) A local bar association or private education provider, if the education qualifies with the California State Bar for continuing legal education credit for a member of the California bar;

(I) The National Association of Professional Geriatric Care Managers;

(J) The National Association of Social Workers;

(K) The National Guardianship Association; or

(L) The Professional Fiduciary Association of California.

(Subd (f) amended effective January 1, 2007.)

(g) [Requirements for continuing education providers] Each continuing education provider must:

(1) Ensure that the instructors teaching continuing education courses are experts in the subject matter;

(2) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;

(3) Keep records of attendance or self-study and distribute to each participant a certificate of completion that identifies the education provider and documents the subject taught, the number of hours of education offered, and the number of hours the participant completed; and

(Subd (g) amended effective January 1, 2007.)

(h) [Proof of compliance]

(1) (*Qualifications*) Every private professional conservator, under penalty of perjury, must demonstrate his or her qualifications under (b) in his or her information statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after the effective date of this rule and annually thereafter, and through June 30, 2008.

(2) (Continuing education)

(A) Every private professional conservator must declare, under penalty of perjury, that he or she has complied with the continuing education requirements under (e) for the previous calendar year in each annual statement filed with the clerk of each appointing court after December 30, 2007, under Probate Code section 2342.

(B) Every private professional conservator must retain certificates of attendance or other proof of participation in continuing education required by this rule for a period of three years after the end of each year of education completed. An appointing court may require a private professional conservator to produce proof, in a manner determined by the court, of compliance with the requirement for any year at any time within that three-year period.

(3) (*Report of noncompliance to the Statewide Registry*) If an appointing court determines that a private professional conservator has failed to comply with the qualification or continuing education requirements of this rule, the court clerk must forward a copy of the court's determination to the Statewide Registry under Probate Code section 2850(d).

(Subd (h) amended effective January 1, 2007.)

(i) [Waiver of continuing education] Notwithstanding any other provision of this rule, a court may, on ground of hardship, waive the continuing education requirements of (e), in whole or in part and under conditions satisfactory to the court, for any private professional conservator appointed by the court.

(j) [Expiration date] This rule is repealed effective July 1, 2008.

(Subd (j) adopted effective January 1, 2007.)

Adopted effective January 1, 2006; amended effective January 1, 2007.

7.1061 TAKING POSSESSION OF AN ASSET OF THE CONSERVATEE AT AN INSTITUTION OR OPENING OR CHANGING OWNERSHIP OF AN ACCOUNT OR SAFE-DEPOSIT BOX IN A FINANCIAL INSTITUTION

(a) [Definitions] As used in this rule, the following terms have the meanings stated below:

(1) An "institution" is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a guardianship that is not a "financial institution" within the meaning of this rule;

(2) A "financial institution" is a bank, trust (except as provided in (d)), savings and loan association, savings bank, industrial bank, or credit union; and

(3) "Taking possession" or "taking control" of an asset held or controlled by an institution includes changing title to the asset, withdrawing all or any portion of the asset, or transferring all or any portion of the asset from the institution.

(b) [Responsibilities of the conservator when taking possession or control of an asset of the conservatee at an institution] When taking possession or control of an asset held by an institution in the name of the conservatee, the temporary, general, or limited conservator of the estate must provide the following to the institution:

(1) A certified copy of the conservator's Letters of Temporary Guardianship or Conservatorship (form GC-150) or Letters of Conservatorship (form GC-350) containing the Notice to Institutions and Financial Institutions on the second page; and

(2) A blank copy of a Notice of Taking Possession or Control of an Asset of Minor or Conservatee (form GC-050).

(c) [Responsibilities of the conservator when opening or changing the name on an account or a safe-deposit box at a financial institution] When opening or changing the name on an account or a safe-deposit box in a financial institution, the temporary, general, or limited conservator of the estate must provide the following to the financial institution:

(1) A certified copy of the guardian's Letters of Temporary Guardianship or Conservatorship (form GC-150) or Letters of Conservatorship (form GC-350) containing the Notice to Institutions and Financial Institutions on the second page; and

(2) A blank copy of a Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box (form GC-051).

(d) [Application of this rule to Totten trust accounts] This rule applies to Totten trust accounts but does not apply to any

other trust arrangement described in Probate Code section 82(b).

Adopted effective January 1, 2009.

7.1062 THE GOOD CAUSE EXCEPTION TO NOTICE OF THE HEARING ON A PETITION FOR APPOINTMENT OF A TEMPORARY CONSERVATOR

(a) [Purpose] The purpose of this rule is to establish uniform standards for the good cause exception to the notice of the hearing required on a petition for appointment of a temporary conservator under Probate Code section 2250(e).

(Subd (a) amended effective January 1, 2009.)

(b) [Good cause for exceptions to notice limited] Good cause for an exception to the notice required by section 2250(e) must be based on a showing that the exception is necessary to protect the proposed conservatee or his or her estate from immediate and substantial harm.

(Subd (b) amended effective January 1, 2009.)

(c) [Court may change the time or manner of giving notice] An exception to the notice requirement of section 2250(e) may include one or any combination of the following:

(1) Waiving notice to one, more than one, or all persons entitled to notice;

(2) Requiring a different period of notice; and

(3) Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or personal delivery, or a combination of these methods, instead of or in addition to notice by mail to the proposed conservatee's spouse or registered domestic partner and relatives.

(Subd (c) amended effective July 1, 2008.)

(d) [Good cause exceptions to notice] Good cause for an exception to the notice requirement of section 2250(e) may include a showing of:

(1) Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the conservatee or the conservatee's estate that could occur during the notice period.

(2) Harm that one or more persons entitled to notice might do to the proposed conservatee or the proposed conservatee's estate if notice is given. Such a showing would not support an exception to the requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.

(3) Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary conservator is appointed and (2) cannot be deferred for the notice period because of the proposed conservatee's pain or extreme discomfort or a significant risk of harm.

(4) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed conservatee's estate during the notice period.

(Subd (d) amended effective January 1, 2009.)

(e) [Contents of request for good cause exception to notice] A request for a good cause exception to the notice requirement of section 2250(e) must be in writing, separate from the petition for appointment of a temporary conservator, and must include:

(1) An application containing the case caption and stating the relief requested;

(2) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;

(3) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b); and

(4) A proposed order.

(Subd (e) amended effective January 1, 2009.)

Amended effective January 1, 2009; adopted effective January 1, 2008; previously amended effective July 1, 2008.

7.1063 CHANGE OF CONSERVATEE'S RESIDENCE

(a) [Pre-move notice of change of personal residence required] Unless an emergency requires a shorter period of notice, the conservator of the person must mail copies of a notice of an intended change of the conservatee's personal residence to the persons listed below at least 15 days before the date of the proposed change, and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

(1) The conservatee;

(2) The conservatee's attorney of record;

(3) The conservatee's spouse or registered domestic partner; and

(4) The conservatee's relatives named in the Petition for Appointment of Probate Conservator (form GC-310), including the conservatee's "deemed relatives" under Probate Code section 1821(b)(1)-(4) if the conservatee has no spouse or registered domestic partner and no second-degree relatives.

(b) [Conservatee's personal residence]

(1) The "conservatee's personal residence" under (a) is the residence the conservatee understands or believes, or reasonably appears to understand or believe, to be his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, whether or not the conservatee is living in that residence on that date. A residential care facility, including a board and care, intermediate care, skilled nursing, or secured perimeter facility, may be the conservatee's personal residence under this rule.

(2) If the conservatee cannot form or communicate an understanding or belief concerning his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, his or her personal residence under this rule is the residence he or she last previously understood or believed, or appeared to understand or believe, to be his or her permanent residence.

(3) For purposes of this rule, the following changes of residence are or are not changes of the conservatee's personal residence, as indicated:

(A) A move from the conservatee's personal residence under this rule to a residential care facility or other residence is a change of the conservatee's personal residence under (a).

(B) A move from a residential care facility or other residence to another residence that is not the conservatee's personal residence under this rule is a change of the conservatee's personal residence under (a).

(C) A move from a residential care facility or other residence to the conservatee's personal residence under this rule is not a change of the conservatee's personal residence under (a).

(c) [Post-move notice of a change of residence required] The conservator of the person must file a notice of a change of the conservatee's residence with the court within 30 days of the date of the change. Unless waived by the court for good cause to prevent harm to the conservatee, the conservator must mail a copy of the notice to the persons named below and file a proof of mailing with the original notice filed with the court. Unless waived, the notice must be mailed to:

(1) The conservatee's attorney of record;

(2) The conservatee's spouse or registered domestic partner; and

(3) The conservatee's relatives named in the Petition for Appointment of Probate Conservator (form GC-310), including the conservatee's "deemed relatives" under Probate Code section 1821(b)(1)-(4) if the conservatee has no spouse or registered domestic partner and no second-degree relatives.

(d) [Conservatee's residence] The "conservatee's residence" under (c) is the conservatee's residence at any time after appointment of a conservator.

(e) [Use of Judicial Council forms GC-079 and GC-080]

(1) The Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward (form GC-079) must be used for the pre-move notice required under (a) and Probate Code section 2352(e)(3). The conservator, the conservator's attorney, or an employee of the attorney may complete the mailing and sign the Proof of Mailing on page 2 of the form. If the notice is mailed less than 15 days before the date of the move because an emergency requires a shorter period of notice, the basis for the emergency must be stated in the notice.

(2) The Post-Move Notice of Change of Residence of Conservatee or Ward (form GC-080) must be used for the post-move notice required under (c) and Probate Code section 2352(e)(1) and (2). The conservator, the conservator's attorney, or an employee of the attorney may complete the mailing and sign the Proof of Mailing on page 2 of the form.

(f) [Prior court approval required to establish conservatee's residence outside California] Notwithstanding any other

provision of this rule, prior court approval is required before a conservatee's residence may be established outside the state of California.

Adopted effective January 1, 2008.

CHAPTER 23
COURT-APPOINTED COUNSEL IN PROBATE PROCEEDINGS
Chapter 23 adopted effective January 1, 2008

7.1101 QUALIFICATIONS AND CONTINUING EDUCATION REQUIRED OF COUNSEL APPOINTED BY THE COURT IN GUARDIANSHIPS AND CONSERVATORSHIPS

(a) [Definitions] As used in this rule, the following terms have the meanings stated below:

(1) "Appointed counsel" or "counsel appointed by the court" are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders directly responsible for the performance of legal services under the court's appointment of a county's public defender.

(2) A "probate guardianship" or "probate conservatorship" is a guardianship or conservatorship proceeding under division 4 of the Probate Code.

(3) "LPS" and "LPS Act" refer to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.

(4) An "LPS conservatorship" is a conservatorship proceeding for a gravely disabled person under chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350-5371.

(5) A "contested matter" in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections are filed by any party or made by the conservatee or proposed conservatee orally in open court.

(6) "AOC" is the Administrative Office of the Courts.

(7) "Counsel in private practice" includes attorneys employed by or performing services under contracts with nonprofit organizations.

(Subd (a) amended effective January 1, 2009.)

(b) [Qualifications of appointed counsel in private practice] Except as provided in this rule, each counsel in private practice appointed by the court on or after January 1, 2008, must be an active member of the State Bar of California for at least three years immediately before the date of appointment, with no discipline imposed within the 12 months immediately preceding any date of availability for appointment after January 1, 2008; and

(1) Appointments to represent minors in guardianships For an appointment to represent a minor in a guardianship:

(A) Within the five years immediately before the date of first availability for appointment after January 1, 2008, must have represented at least three wards or proposed wards in probate guardianships, three children in juvenile court dependency or delinquency proceedings, or three children in custody proceedings under the Family Code; or

(B) At the time of appointment, must be qualified:

(i) For appointments to represent children in juvenile dependency proceedings under rule 5.660 and the court's local rules governing court-appointed juvenile court dependency counsel; or

(ii) For appointments to represent children in custody proceedings under the Family Code under rule 5.242, including the alternative experience requirements of rule 5.242(g).

(C) Counsel qualified for appointments in guardianships under (B) must satisfy the continuing education requirements of this rule in addition to the education or training requirements of the rules mentioned in (B).

(2) Appointments to represent conservatees or proposed conservatees For an appointment to represent a conservatee or a proposed conservatee, within the five years immediately before the date of first availability for appointment after January 1, 2008, counsel in private practice must have:

(A) Represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships; or

(B) Completed any three of the following five tasks:

(i) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;

(ii) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party in two contested probate or

LPS conservatorship matters. A contested matter that qualifies under this item and also qualifies under (i) may be applied toward satisfaction of both items;

(iii) Represented a party for whom the court could appoint legal counsel in a total of three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;

(iv) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under division 9 of the Probate Code; or

(v) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.

(3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must also be covered by professional liability insurance satisfactory to the court in the amount of at least $100,000 per claim and $300,000 per year.

(Subd (b) amended effective January 1, 2009.)

(c) [Qualifications of deputy public defenders performing legal services on court appointments of the public defender]

(1) Except as provided in this rule, beginning on January 1, 2008, each county deputy public defender with direct responsibility for the performance of legal services in a particular case on the appointment of the county public defender under Probate Code sections 1470 or 1471 must be an active member of the State Bar of California for at least three years immediately before the date of appointment; and either

(A) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships; or

(B) Have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in postcertification judicial proceedings or conservatorships under the LPS Act.

(2) A deputy public defender qualified under (1) must also be covered by professional liability insurance satisfactory to the court in the amount of at least $100,000 per claim and $300,000 per year, or be covered for professional liability at an equivalent level by a self-insurance program for the professional employees of his or her county.

(3) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy public defender with direct responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

(d) [Transitional provisions on qualifications]

(1) Counsel appointed before January 1, 2008, may continue to represent their clients through March 2008, whether or not they are qualified under (b) or (c). After March 2008, through conclusion of these matters, the court may retain or replace appointed counsel who are not qualified under (b) or (c) or may appoint qualified co-counsel to assist them.

(2) In January, February, and March 2008, the court may appoint counsel in new matters who have not filed the certification of qualifications required under (h) at the time of appointment but must replace counsel appointed under this paragraph who have not filed the certificate before April 1, 2008.

(e) [Exemption for small courts]

(1) Except as provided in (2) and (3), the qualifications required under (b) or (c) may be waived by a court with four or fewer authorized judges if it cannot find qualified counsel or for other grounds of hardship.

(2) A court described in (1) may, without a waiver, appoint counsel in private practice who do not satisfy the insurance requirements of (b)(3) if counsel demonstrate to the court that they are adequately self-insured.

(3) A court may not waive or disregard the self-insurance requirements of (c)(2) applicable to deputy public defenders.

(4) A court waiving the qualifications required under (b) or (c) must make express written findings showing the circumstances supporting the waiver and disclosing all alternatives considered, including appointment of qualified counsel from adjacent counties and other alternatives not selected.

(Subd (e) amended effective January 1, 2009.)

(f) [Continuing education of appointed counsel] Beginning on January 1, 2008, counsel appointed by the court must complete three hours of education each calendar year that qualifies for Minimum Continuing Legal Education credit for State Bar-certified specialists in estate planning, trust, and probate law.

(Subd (f) amended effective January 1, 2009.)

(g) [Additional court-imposed qualifications, education, and other requirements] The qualifications in (b) and (c) and the continuing education requirement in (f) are minimums. A court may establish higher qualification or continuing education requirements, including insurance requirements; require initial education or training; and impose other requirements, including an application by private counsel.

(h) [Initial certification of qualifications; annual post-qualification reports and certifications]

(1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, including deputy public defenders, must certify to the court in writing before April 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.

(2) After March 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.

(3) Each counsel appointed or eligible for appointment by the court under this rule must immediately advise the court of the imposition of any State Bar discipline.

(4) Beginning in 2009, each appointed counsel must certify to the court before the end of March of each year that:

(A) His or her history of State Bar discipline and professional liability insurance coverage or, if appointed by a court with four or fewer authorized judges under (e)(2), the adequacy of his or her self-insurance, either has or has not changed since the date of his or her qualification certification or last annual certification; and

(B) He or she has completed the continuing education required for the preceding calendar year.

(5) Annual certifications required under this subdivision showing changes in State Bar disciplinary history, professional liability insurance coverage, or adequacy of self-insurance must include descriptions of the changes.

(6) Certifications required under this subdivision must be submitted to the court but are not to be filed or lodged in a case file.

(Subd (h) amended effective January 1, 2009.)

(i) [Reporting] The AOC may require courts to report appointed counsel's qualifications and completion of continuing education required by this rule to ensure compliance with Probate Code section 1456.

Amended effective January 1, 2009; adopted effective January 1, 2008.

CHAPTER 24
MISCELLANEOUS [RESERVED]

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