

CHAPTER 2 LPS CONSERVATORSHIP

Rule 8.2.1

“Conservator”

A. As used in this Division, "conservator" is a reference to the person appointed by the Mental Health Court to serve as conservator, and includes a person appointed as a temporary conservator, an interim conservator, or a successor conservator.

B. The conservator is responsible for ensuring that the conservatee appears in court for any scheduled hearings requiring the conservatee's presence. This responsibility includes obtaining the necessary transportation.

(Adopted 7/1/2006)

Rule 8.2.2

“Conservatee”

As used in this Division, "conservatee" is a reference to the person subject to LPS proceedings and includes a proposed conservatee and a conservatee under a temporary conservatorship.

(Adopted 7/1/2006)

Rule 8.2.3

Calendar Call

A. Subject to court discretion, conservatorship cases on the regular calendar will be heard in the following order:

1. Stipulation matters read into the record;
2. Uncontested matters;
3. Contested conservatorships;
4. Writs of habeas corpus; and
5. Petitions to authorize medical treatment, medication (Riese) hearings or appeals, and electroconvulsive treatment.

B. A matter is considered to be contested if an issue is in question.

(Adopted 7/1/2006)

Rule 8.2.4

Service-Proof of Service

Service of any notice on a conservatee must be done in accordance with Welfare and Institutions Code sections 5000 et seq., or Probate Code section 1200 et seq. where no method appears in the Welfare and Institutions Code. Service on any attorney may be made in accordance with Code of Civil Procedure section 1011 or 1012.

(Adopted 7/1/2006)

Rule 8.2.5

Subpoenas

Subpoenas and subpoenas duces tecum regarding LPS conservatorships and related matters must be issued in accordance with Code of Civil Procedure section 1985 et seq., provided the provisions for maintaining confidentiality, as contained in Welfare and Institutions Code section 5328, are not violated.

(Adopted 7/1/2006)

Rule 8.2.6

Establishment of Conservatorship – A Referral Initiates The Establishment Procedure

A. To initiate the procedure for establishing a conservatorship, a psychiatrist and/or a licensed clinical psychologist must prepare a report (referral) which presents a factually supported conclusion that the proposed conservatee is a proper subject of a Lanterman-Petris-Short Act conservatorship.

B. The preparer of the referral must submit the referral to the Public Conservator.

(Adopted 7/1/2006)

Rule 8.2.7

Establishment of Conservatorship – Preparation and Filing of Petition

If, after reviewing the referral, the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator must:

A. Prepare and file with the court clerk at the Mental Health Desk a petition for establishment of an LPS conservatorship and obtain a hearing date; and

B. Serve a copy of the petition on the counsel for the proposed conservatee no less than fifteen court days prior to the hearing on the petition.

(Adopted 7/1/2006)

Rule 8.2.8

Establishment of Conservatorship - Temporary Conservatorship

A. At the time of filing a petition for establishment of an LPS conservatorship, the Public Conservator may, in accordance with Welfare and Institutions Code section 5352.1, request an order of the Mental Health Court establishing a temporary conservatorship which includes the appointment of a temporary conservator.

B. Good cause for establishing a temporary conservatorship can be based on declarations of professional persons recommending the conservatorship.

(Adopted 7/1/2006)

Rule 8.2.9

Establishment of Conservatorship - Notice of Temporary Conservatorship

Within five working days of the establishment of the temporary conservatorship, the Public Conservator must mail to the temporary conservatee a copy of the order appointing a temporary conservator.

(Adopted 7/1/2006)

Rule 8.2.10

Establishment of Conservatorship – Term of Temporary Conservatorship

A. All temporary conservatorships expire automatically at the conclusion of thirty days.

B. When a hearing to establish a permanent conservatorship is continued, the temporary conservatorship will automatically continue to be in effect until the date of continuance, subject to one of the parties presenting an objection to the court and the court ruling otherwise.

(Adopted 7/1/2006)

Rule 8.2.11

Establishment of Conservatorship – Preparation of Conservatorship Investigation Report

A. If the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator:

1. Shall, as the Welfare and Institutions Code section 5352 "officer providing conservatorship investigation," prepare the conservatorship investigation report; and

2. Shall serve the conservatorship investigation report on the counsel for the proposed conservatee no less than five court days prior to the hearing on the petition.

B. If the conservatorship investigation report refers to any written evaluation or report prepared by a physician, psychologist, social worker, nurse or other professional person, the conservatorship investigation report must identify such evaluation or report with sufficient specificity to allow the attorney of record for the proposed conservatee the opportunity to view or subpoena such document. Identification may be accomplished by specifying such things as: the date of the report; the name and title of the person preparing the report; or the facility/organization with which the preparer is affiliated.

(Adopted 7/1/2006)

Rule 8.2.12

Establishment of Conservatorship – Hearing - Waiver of Presence of Physician

The presence of a physician at the hearing on the petition to establish a conservatorship may be excused in advance of the date of the hearing by stipulation between the Public Conservator and the attorney for the proposed conservatee. Thereafter, if it is determined that the presence of the physician is required, the Mental Health Court will continue the hearing.

(Adopted 7/1/2006)

Rule 8.2.13

Establishment of Conservatorship - Hearing - Conservatee Unable or Unwilling to Attend Hearing

At any conservatorship hearing conducted under Division 8, Chapter 2, the Mental Health Court may, in its discretion, proceed in the absence of the conservatee if counsel for the conservatee: (1) requests the court to waive the conservatee's presence, (2) represents to the court that there has been contact with the conservatee, and (3) states that, in the attorney's opinion, it is not in the best interests of the conservatee-client to be present in court or for the court to convene where the conservatee is then housed.

(Adopted 7/1/2006)

Rule 8.2.14

Establishment of Conservatorship - Hearing – Evidence (Conservatorship Referral Document)

Upon stipulation of the parties, the written conservatorship referral prepared by a psychiatrist and/or a licensed clinical psychologist who is on the staff of a Lanterman-Petris-Short Act approved facility may be received into evidence.

(Adopted 7/1/2006)

Rule 8.2.15

Establishment of Conservatorship – Hearing – Evidence (Conservatorship Investigation Report)

Under the Welfare and Institutions Code, the conservatorship investigation report is admissible into evidence at the hearing.

(Adopted 7/1/2006)

Rule 8.2.16

Establishment of Conservatorship - Hearing - Appointment of Conservator

A. The order imposing a conservatorship must include the appointment of a conservator.

B. The Mental Health Court will appoint co-conservators only under unusual circumstances where it has been demonstrated to the court that the appointment of a co-conservator is necessary and is in the best interests of the conservatee.

C. Within ten working days of the appointment, the conservator must send notice to the conservatee of the establishment of the conservatorship. The notice must include the name, address and telephone number of the conservator. Where the conservator is a public official, the notice must include the name and telephone number of the social worker assigned to the case.

(Adopted 7/1/2006)

Rule 8.2.17

Establishment of Conservatorship - Preparation of Orders

The petitioner must prepare all necessary orders required in the establishment of the conservatorship and appointment of a conservator.

(Adopted 7/1/2006)

Rule 8.2.18

Conservator – Request To Be Relieved

When, for any reason, a conservator seeks to be relieved, the court may appoint a successor conservator pursuant to Probate Code section 2680 et seq. The successor conservator must notify the conservatee of the appointment.

(Adopted 7/1/2006)

Rule 8.2.19

Conservator – Successor By Operation of Law

Where the Public Conservator is appointed to serve as conservator, a successor to the office will, by operation of law, be deemed the successor conservator.

(Adopted 7/1/2006)

Rule 8.2.20

Conservator, Private – Relief For Non-Performance - Appointment of Interim Conservator

A. Where there is evidence that a private conservator is not able to perform the duties or responsibilities of conservator, the Public Conservator may petition the court: (1) to relieve temporarily the current conservator; and

(2) to make an interim appointment of the Public Conservator to serve as conservator pending further investigation of the conservatorship.

B. If good cause is shown and the court temporarily relieves the private conservator, the court will (1) direct the Public Conservator to conduct an investigation; and (2) set a hearing date to consider the Public Conservator's report and take necessary action concerning the conservatorship.

(Adopted 7/1/2006)

Rule 8.2.21

Rehearing - Time for Filing

A. An initial petition requesting a rehearing may be filed by the conservatee or the conservatee's attorney at any time.

B. Pursuant to Welfare and Institutions Code section 5364, after the filing of the first petition for rehearing, no further petition for rehearing may be submitted for a period of six months.

(Adopted 7/1/2006)

Rule 8.2.22

Rehearing – Issues Raised – Burden Of Proof

A. Grave Disability: A rehearing on the issue of whether the conservatee remains "gravely disabled" is governed by Welfare and Institutions Code section 5364. The burden of proof is upon the conservatee to establish, by a preponderance of the evidence, that the conservatee is no longer gravely disabled as defined in Welfare and Institutions Code section 5008, subdivision (h).

B. Rights of Conservatee: Rehearings on the issue of the powers conferred on the conservator or the rights denied the conservatee under Welfare and Institutions Code sections 5357 and 5358 are governed by Welfare and Institutions Code section 5358.3. The burden of proof is on the conservatee to show by a preponderance of the evidence why a right should be restored.

C. Conservator's Authority Over Routine Medical Treatment: Under the terms of the conservatorship, where the conservatee has retained the right to make medical decisions unrelated to remedying or preventing the recurrence of the conservatee being gravely disabled, the conservator may petition the court for a rehearing on this issue where the treating physician and the conservator have reason to question the ability of the conservatee to give informed consent to medical treatment.

(Adopted 7/1/2006)

Rule 8.2.23

Rehearing - Procedure

A. Form and Content of Petition. The petition for rehearing must: (1) specifically state whether it is brought pursuant to Welfare and Institutions Code section 5364 or section 5358.3, or both; and (2) specifically state the basis for the proposed change; and (3) the present the filing and hearing dates of all previous rehearing petitions filed on behalf of the conservatee during the current one year term of the conservatorship.

B. Setting Date For Hearing. The court clerk at the Mental Health Desk will set the date for hearing the petition for rehearing within thirty days of the filing of the petition, as required by Welfare and Institutions Code section 5365.

C. Notice. The petitioner for rehearing must: (1) obtain from the court clerk at the Mental Health Desk the date set for hearing the petition for rehearing; and (2) at least fifteen days prior to the hearing, serve the petition and notice of the hearing date on the conservator and all relatives of the conservatee within the second degree.

D. No Right To Jury. There is no right to a jury trial for a rehearing.

(Adopted 7/1/2006)

Rule 8.2.24

Rehearing – Order – Preparation

A. The order will be prepared by the Public Conservator. If the matter involves a private conservator, the order will be prepared by the petitioner for rehearing.

B. If the order restores the right to vote (Elec. Code, § 2210, subd. (c)), the order will expressly identify the restoration of the right to vote and a copy of the order must be served on the Registrar of Voters.

(Adopted 7/1/2006)

Rule 8.2.25 – 8.2.30 [reserved]

Rule 8.2.31**Re-Establishment of Conservatorship – Notice Of Expiration**

No less than sixty days prior to the expiration of the one-year period of the conservatorship, the court clerk at the Mental Health Desk will send notice of the pending expiration to: (1) the conservator, (2) if a private conservator, then also the Public Conservator, (3) the conservatee, (4) the conservatee's attorney, and (5) the facility wherein the conservatee resides.

(Adopted 7/1/2006)

Rule 8.2.32**Re-Establishment of Conservatorship - Petition**

A. Filing. To re-establish a conservatorship, the conservator must, no less than thirty days prior to the date of scheduled termination, (1) prepare and file with the court clerk at the Mental Health Desk a petition to re-establish the conservatorship, and (2) obtain a hearing date.

B. Calendaring of Hearing. Upon receipt of the original and two copies of the request for hearing, the court clerk at the Mental Health Desk will immediately calendar a hearing on the matter to be heard no less than twenty-one days nor more than thirty days from the date of filing of the written request.

C. Service of Petition. No less than fifteen days prior to the date of the hearing to re-establish the conservatorship, the conservator must serve, personally or by first class mail, postage prepaid, a copy of the petition and notice of the hearing date on: (1) if a private conservator, then on the Public Conservator, (2) the conservatee, (3) the conservatee's attorney, and (4) the facility wherein the conservatee resides.

(Adopted 1/2006)

Rule 8.2.33**Re-Establishment of Conservatorship – Consent to Re-Establishment**

The conservatee, or the attorney for the conservatee, may stipulate to the re-establishment of the conservatorship.

(Adopted 7/1/2006)

Rule 8.2.34**Re-Establishment of Conservatorship – Hearing Procedures**

The hearing on the petition to re-establish the conservatorship will be conducted in accordance with the rules applicable to a hearing on a petition to establish a conservatorship.

(Adopted 7/1/2006)

Rule 8.2.35**Re-Establishment of Conservatorship – Termination of Conservatorship**

A. By Expiration or Denial Of Petition. The conservatorship is terminated: (1) if no petition to re-establish the conservatorship is timely filed; or (2) the court denies the petition to re-establish the conservatorship.

B. Order. If the conservatorship is terminated, the Public Conservator must prepare the order terminating the conservatorship and file it with the court. If the matter involves a private conservator, the private conservator must prepare the order terminating the conservatorship and file it with the court.

C. Notice of Order. The court clerk at the Mental Health Desk will, by first class mail, send a copy of the order of termination to the conservator, the conservatee, and the conservatee's attorney.

(Adopted 7/1/2006)

Rule 8.2.36 – 8.2.40 [reserved]**Rule 8.2.41****Early Termination of Conservatorship – By Conservator's Request**

The conservator may file a request for early termination of conservatorship prior to expiration of the one-year expiration date when:

A. The conservatee has reached treatment goals; and/or

B. The conservatee is no longer considered gravely disabled; and/or

C. The conservatee's whereabouts are unknown.

(Adopted 7/1/2006)

Rule 8.2.42**Early Termination of Conservatorship – By Conservatee's Request**

The conservatee may move the court for an order terminating conservatorship prior to expiration of the one-year expiration date by scheduling a hearing and noticing the conservator of same in accordance with the provisions in the Rehearing section of these rules.

(Adopted 7/1/2006)

Rule 8.2.43**Early Termination of Conservatorship – Procedure**

A. By Ex Parte Order. Termination may be effected by ex parte order upon proper notice as herein provided and Probate Code section 1862.

B. Hearing upon Notice. Early termination for reasons other than those stated above require a noticed hearing in accordance with the procedures outlined in the sections of these Rules related to "Notices" and "Reappointment of Conservator".

C. Service of Notice. The attorney must be given verbal notice of any early termination of conservatorship, and if objection to the termination is raised, the matter will be calendared for hearing, and notice will be given in accordance with the procedures outlined in "Notices" and "Reappointment of Conservator" in these rules.

D. Termination Without Objection. If no objection to termination is made, then the conservatorship may be terminated by the court.

(Adopted 7/1/2006)

Rule 8.2.44 - 8.2.50 [reserved]**Rule 8.2.51****Jury Trial - Request**

A. Verbal Request for Jury Trial. When requesting a jury trial, the conservatee's attorney must give verbal notification to the conservator and conservator's attorney. Such notice must be either in open court when the request is made at the hearing or telephonically on the date the request is filed. If notice is to County Counsel it may be made to the deputy assigned to the Mental Health Court, Office of County Counsel, (619) 531-4860, and to the Calendar Division of the San Diego Superior Court.

B. Written Notice of Trial Date. On the date that a jury trial is requested, the conservatee's attorney must serve, by mail, a copy of a written notice of jury trial date form on the conservator's attorney. The notice of jury trial date form must include the conservatee's name, the case number, the attorney's name, address, telephone number, the date of the request and the scheduled date of the jury trial.

C. Setting Trial Date. The date of the jury trial will not be set beyond the ten plus fifteen day limit set forth in Welfare and Institutions Code section 5350, subdivision (d). However, if the written demand for jury trial contains written approval of the requested trial date by the person for whom the conservatorship is sought, petitioner for the conservatorship, or his or her attorney, then the trial may be set beyond the ten plus fifteen day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).

(Adopted 7/1/2006)

Rule 8.2.52**Jury Trial – Request Withdrawn**

A. By Conservatee. When a jury trial request is to be withdrawn by the conservatee, the conservatee's attorney must make the request either (1) in open court or (2) by a written declaration filed with the court and served on the conservator's attorney. Telephone notification that the request is to be withdrawn must be given to the conservator's attorney as soon as possible and to the Calendar Division of the San Diego Superior Court.

B. By Conservator. When a petition is to be withdrawn by the conservator, the regular procedures for terminating conservatorships will be followed. Conservator's attorney must give telephonic notification to the conservatee's attorney as soon as possible.

(Adopted 7/1/2006)

Rule 8.2.53**Post-Verdict Matters**

A. For Conservatee. If the verdict favors the conservatee, the conservatorship, if any, will be terminated forthwith.

B. For Conservator Imposing Disabilities and Setting Placement.

1. If a prior hearing was held, a conservator appointed, disabilities imposed and placement set and not vacated, then that order will remain in effect after the jury trial.

2. If there is no prior valid order appointing a conservator, fixing disabilities and placement, then the trial judge will appoint the conservator and fix the disabilities and placement in accordance with the recommendations of the Public Conservator, in the absence of evidence to the contrary.

If the conservatee requests the presence of the treating psychiatrist, forensic psychiatrist or conservator for the hearing on appointment of a conservator, the conservatee may at any time within five court days after the hearing, file a written hearing request in accordance with these rules. The hearing will be held in the Mental Health Division of the San Diego Superior Court; and the order of the trial court will remain in effect unless modified or vacated at that hearing.

C. Judgment. The prevailing party will prepare and submit a proposed judgment to the trial court.
(Adopted 7/1/2006)