

**DIVISION VIII
MENTAL HEALTH COURT**

**CHAPTER 1
COURT, LOCATIONS, VENUE,
PROCEDURES**

Rule 8.1.1

Mental Health Court

The Mental Health Court is located in one of the departments in the Central Division of the San Diego Superior Court and constitutes the Mental Health Division of the Superior Court. The Mental Health Court hears the categories of matters addressed in these rules and such other categories of matters as may be assigned by the Presiding Judge. Generally, a matter set for trial will not be assigned to the Mental Health Court.
(Adopted 7/1/2006)

Rule 8.1.2

Mental Health Court Judge

A. All references in these rules to the Mental Health Court judge means the judge designated to preside over the Mental Health Division of the San Diego Superior Court.

B. Upon a showing of good cause, the Mental Health Court judge may issue orders at variance with these rules.

(Adopted 7/1/2006)

Rule 8.1.3

Addresses and Telephone Numbers of the Mental Health Court

San Diego Superior Court:
Mental Health Court (as designated by the Presiding Judge)
1100 Union Street
San Diego, California 92101

Mental Health Desk:
Clerk, San Diego Superior Court, Room 2005
1100 Union Street
San Diego, California 92101
(619) 450-5700

Public Conservator:
5560 Overland Ave. Suite 130
San Diego, CA 92123
(858) 694-3500

Attorney for Public Conservator
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101, USA
(619) 531-4860

Public Defender's Office
233 A Street, Suite 500
San Diego, CA 92101
(619) 338-4617

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2015; Rev. 1/1/2017)

Rule 8.1.4

Venue

A. Addressed in Moving Papers. To be accepted for filing with the court, a petition or motion subject to the rules of this division must present facts that show that San Diego Superior Court is the proper venue for hearing the petition or motion.

B. Change of Venue. A motion for a change of venue must be filed with the Mental Health Desk clerk. The request must include a declaration of counsel presenting the reasons why a change of venue is required.

(Adopted 7/1/2006)

Rule 8.1.5

Pleadings

A. Caption. The caption of a petition and all other papers must be all-inclusive regarding the relief sought in the petition or papers so that the matter may be properly calendared. The court clerk at the Mental Health Desk is not required to read the body of the petition or other papers to determine the scope of the filed petition or other papers.

B. Use of Printed Forms. The court prefers that counsel use the latest version of the printed forms approved by the Judicial Council. If a form cannot be used, counsel must prepare their own documents using a preferred form as a guide. Forms are available through the court clerk at the Mental Health Desk.

C. Verification. All papers which require verification must be verified in substantially the following manner:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this (name of document) is executed on (date).

(signature)

(name typed)

D. A petition, motion, and all other papers concerning the matters for the Mental Health Court must be filed with the court clerk at the Mental Health Desk.

(Adopted 7/1/2006)

Rule 8.1.6

Notice, Written

A. Required. Unless specifically excepted by these rules, all matters presented to the Mental Health Court must be preceded by written notice served on the party affected and the attorney of record of the party affected.

B. Form of Notice. All written notices must substantially comply with the requirements of Probate Code section 1200 et seq. The notice must contain the time, date and place of hearing.

C. Timing of Written Notices. All written notices, except as otherwise required by this division, must be served in accordance with the time limits prescribed by Probate Code section 1460.

D. Service of Notice – General. A declaration of service for any written notice required by statute must be completed and filed with this court. The declaration must comply with Code of Civil Procedure section 1013, subdivision (a), but need not be accompanied by a copy of the notice so long as the original notice is on file and is clearly identified in the declaration of service.

(Adopted 7/1/2006)

Rule 8.1.7

Notices Other than Written

A. Except as to written notices required by statute or these rules, verbal notice must be provided to affected parties or their attorney and expert witnesses (if appearance is required) for any of the following actions:

1. Waiver of the presence of the expert;
2. Forensic examination by County-employed psychiatrists;
3. Inability or unwillingness of any conservatee to attend;
4. Termination of a temporary conservatorship;
5. Any ex parte matter other than the establishment of a temporary conservatorship.

B. The notice required by this rule may be given by any means, including telephone. This notice must be given not less than one working day before the matter will be submitted to the court or the forensic examination is to occur. Where a decision to file for an appointment or termination of a temporary conservator is made less than one day before filing, notice must be given immediately after the decision to file. When a conservatee is unable or unwilling to attend a hearing and such inability or unwillingness is not made apparent in adequate time to allow for one working day notice, then notice must be given immediately after the conservatee is found to be unable or unwilling to attend.

(Adopted 7/1/2006; Rev. 1/1/2017)

Rule 8.1.8

Hearing Once Notified Cannot be Advanced

When a hearing on a Mental Health 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, unless so ordered by the court.

(Adopted 7/1/2006)

Rule 8.1.9

Preparation of Order or Judgment

A copy of any proposed order or judgment must be submitted to opposing counsel before presentation to the judge rendering the order or judgment. A conformed copy of such order must be sent to opposing counsel.
(Adopted 7/1/2006)

CHAPTER 2 LANTERMAN-PETRIS-SHORT ("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 15 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 30 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. Must, as the Welfare and Institutions Code section 5352 "officer providing conservatorship investigation," prepare the conservatorship investigation report; and

2. Must 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; Rev. 1/1/2016)

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 10 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) 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 30 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 15 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 60 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 30 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 21 days nor more than 30 days from the date of filing of the written request.

C. Service of Petition. No less than 15 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 15 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 15 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)

CHAPTER 3 AUTHORIZATION FOR CONSERVATOR TO CONSENT TO MEDICAL TREATMENT FOR CONSERVATEE

Rule 8.3.1

Authority For Conservator

A. General Authority – Routine Treatment. Pursuant to Welfare and Institutions Code section 5358, subdivision (b), the court may authorize the conservator to consent to any treatment for the conservatee which the treating physician recommends as being "routine medical treatment." With this general authority, the conservator has the right to consent to, and thus require the conservatee to receive, the recommended, routine treatment.

B. Specific Authority - Routine Treatment. If the conservator does not have general authority pursuant to Welfare and Institutions Code section 5358, subdivision (b), and the treating physician has recommended a routine treatment to which the conservatee has not consented, then, to obtain authority to consent to conservatee receiving the recommended, routine treatment, the conservator must file a petition.

C. Specific Authority - Non-Routine Treatment. In all cases, when the treating physician is recommending treatment that is more invasive or intrusive than "routine medical treatment," such as surgery or amputation or a procedure that poses a substantial risk to the life of the conservatee, and the conservatee has not consented to the treatment, then, to obtain authority to consent to conservatee receiving the recommended, non-routine treatment, the conservator must file a petition.

D. Specific Authority – Questioned Treatment. In discharging the duty to protect the welfare of the conservatee, the conservator may file a petition to obtain authorization to consent to a recommended medical treatment when:

1. The conservatee, relatives, or other persons the conservator has previously identified expressed opposition to the proposed procedure; or
2. The conservator has substantial questions as to whether the procedure should be performed.

(Adopted 7/1/2006)

Rule 8.3.2

Obtaining Authority For Medical Treatment

A. Petition. Authorization for the conservator to consent to specific medical/surgical treatment must be sought by the conservator filing a petition. The Petition must be accompanied by

1. A written statement signed under penalty of perjury by the treating physician which identifies the recommended treatment and the basis for the recommendation; or
2. A form which includes the information as referenced in Probate Code section 2357.

B. Submission of Petition Ex Parte. Where the conservator already possesses general authority to consent to routine, medical treatment, the petition may be submitted ex parte to the court under the following circumstances:

1. The conservator, in good faith, based on medical advice, determines that the proposed procedure is required;
2. The conservatee personally or through counsel, has expressly (a) waived a hearing and (b) declared non-opposition to the proposed procedure; and
3. Relatives, friends or other persons the conservator has previously identified have expressly supported the proposed procedure.

C. Submission of Petition. Except as provided herein, the petition must be filed with that clerk at the Mental Health Desk who will calendar the motion. The conservator must provide notice to the conservatee.

(Adopted 7/1/2006)

Rule 8.3.3

Hearing on Petition

The court may convene the hearing at the facility providing treatment and care of the conservatee when the conservator or conservatee provide evidence to the court that:

A. Transporting the conservatee to court would (1) be physically injurious for the conservatee; or (2) create a substantial threat of harm to the conservatee or others; or

B. It would be in the best interests of the conservatee to have the hearing conducted at the facility providing the treatment and not at the courthouse.

(Adopted 7/1/2006)

Rule 8.3.4

Notice

As referenced in Welfare and Institutions Code section 5358.2, notice to the conservatee means verbal notice.

(Adopted 7/1/2006)

Rule 8.3.5

Transportation

The conservator is be responsible for all necessary notice and arrangements for court hearings, and must coordinate transportation of the conservatee to said hearings.

(Adopted 7/1/2006)

Rule 8.3.6

Emergency Treatment

Nothing in these rules in any way impedes or affects other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law.

(Adopted 7/1/2006)

CHAPTER 4 ELECTROCONVULSIVE TREATMENT

Rule 8.4.1

Conditions for Administering

Electroconvulsive treatment may be administered to an involuntary patient pursuant to Welfare and Institutions Code section 5326.7 and to a voluntary patient pursuant to Welfare and Institutions Code section 5326.75 consistent with these rules.
(Adopted 7/1/2006)

Rule 8.4.2

Attorney's Consent to Patient's Capacity

The patient's attorney is authorized to agree to the patient's capacity or incapacity to give written informed consent pursuant to Welfare and Institutions Code section 5326.7. If the patient's attorney and physician agree that the patient has the capacity to give written informed consent, such agreement must be documented in the patient's records. The attorney's consent must be obtained for additional treatments in number or time, not to exceed 30 days.
(Adopted 7/1/2006)

Rule 8.4.3

Filing Petition

If either the attending physician or the attorney believes that the patient does not have the capacity to give informed consent, either the attorney or the attending physician must file a petition in the Mental Health Court to determine the patient's capacity to give consent.
(Adopted 7/1/2006)

Rule 8.4.4

Patient's Attorney – Declaration Concerning Conflict of Interest

The attorney representing the patient may file a declaration with the court, prior to or at the time of the hearing, stating the reasons why the court should find that there is no conflict of interest in the attorney's representation of the patient. A copy of said declaration must be made available to county counsel by the attorney filing the declaration.
(Adopted 7/1/2006)

Rule 8.4.5

Treating Physician - Declaration Concerning Treatment

The physician recommending the treatment must submit to the court a declaration that states the conditions for administering electroconvulsive treatment as referenced by section 5326.7 of the Welfare and Institutions Code have been satisfied.
(Adopted 7/1/2006)

Rule 8.4.6

Change of Patient's Condition

If the court determines that the patient does have the capacity to give written informed consent, a subsequent petition may not be filed unless it can be shown by facts stated in the petition that the patient's condition has changed since the court made the finding and that as a result of the changed condition, the patient does not have capacity to give a written informed consent.
(Adopted 7/1/2006)

Rule 8.4.7

Appointment of Temporary Conservator

If the court determines that the patient does not have the capacity to give written informed consent and there is no responsible relative or conservator of the patient available, the court may appoint the Public Counselor as temporary conservator. Such appointment may be made on the basis of testimony of the professional person representing the LPS approved facility, that the patient has a mental disorder and is gravely disabled and that said professional person intends to file a conservatorship referral recommending conservatorship. In cases where the patient is found to be a danger to self and/or others but not gravely disabled, the court may appoint the Public Counselor as guardian ad litem for purpose of giving consent to convulsive treatment.
(Adopted 7/1/2006)

CHAPTER 5 DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION (RIESE HEARING)

Rule 8.5.1

Scope and Purpose

The following procedures are intended to implement the requirements of *Riese v. St. Mary's Hospital* (1988) 209 Cal.App.3d 1303, and Welfare and Institutions Code section 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold), 5250 (14-day hold), 5270 (30-day hold) or 5350 et seq. (temporary conservatorship).

Generally, the hearing is conducted at the facility where the patient is being treated; and any appeal of the hearing officer's decision is heard by the Mental Health Court.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2016)

Rule 8.5.2

Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of antipsychotic medication (as defined by subdivision (l) of Welfare and Institutions Code section 5008) 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.

(Adopted 7/1/2006; Rev. 1/1/2016)

Rule 8.5.3

Required Documents

To obtain a determination of the patient's capacity to give or withhold informed consent to treatment by antipsychotic medication, the treating physician must complete, sign and date the "Petition of Treating Physician Regarding Capacity to Consent to or Refuse Antipsychotic Medication" (SDSC Form #MHC-056). If the physician will not be present for the hearing, the petition must have attached to it a "Treating Physician's Declaration Regarding Capacity of Patient to Consent to or Refuse Antipsychotic Medication" form (SDSC Form #MHC-055). These forms must be delivered to or faxed to the Office of Counselor in Mental Health in order to calendar a hearing.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2015; Rev. 1/1/2016)

Rule 8.5.4

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 required documents in order to calendar a hearing. The Office of the Counselor in Mental Health will calendar all hearings upon receipt and filing of the requisite forms. Whenever possible, the hearing will be set within two court days. The physician or treating facility must notify the Office of the Counselor in Mental Health of the need for an interpreter when one is needed at the hearing.

(Adopted 7/1/2006)

Rule 8.5.5

Attorney Duties

The patient's attorney 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 antipsychotic medication. If the patient consents to the administration of antipsychotic medication prior to the hearing, it is the responsibility of the patient's attorney to notify the Office of the Counselor in Mental Health promptly so the hearing may be canceled and unnecessary travel and expense may be avoided.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.6

Appointment of Hearing Officers

The San Diego Superior Court Executive Officer will appoint attorneys as Hearing Officers to conduct the evidentiary hearings.

(Adopted 7/1/2006)

Rule 8.5.7

Treating Physician/Facility Representative

Physicians and treating facilities may, but need not be formally represented by counsel. The physician must present the petition, or a facility representative must present the petition and declaration, as well as any verbal or documented evidence at the time of the hearing. The facility representative must be a psychiatrist, psychologist, registered nurse, or a social worker with at least a master's degree. Although it is not required that the treating physician testify, it should be recognized that the absence of the treating physician may leave insufficient evidence of incapacity in the event the petition and declaration are deficient.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.8

Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality and safety. 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 the facility as is practicable under the circumstances. Hearings will be electronically recorded.

(Adopted 7/1/2006)

Rule 8.5.9

Burden of Proof

The burden is on the physician or treating facility to establish by clear and convincing evidence that the patient does not have the capacity to give or withhold informed consent to the administration of antipsychotic medication.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.10

Determination of Capacity

In determining the patient's capacity to give or withhold informed consent, the judge or 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 and otherwise participate in the treatment decision by means of rational thought processes.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.11

Patient Presence

The patient has the right to be present at the hearing and at any appeal hearing and to present evidence and to cross-examine witnesses at the hearing and appeal hearing through his or her attorney. However, the patient may choose not to attend the hearing or the appeal hearing.

(Adopted 7/1/2006; Rev. 1/1/2016)

Rule 8.5.12

Access to Records

The hearing officer and the Mental Health Court judge may 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.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.13

Continuance of Hearings

Upon a showing of good cause and at the discretion of the judge or hearing officer, a hearing may be continued for a reasonable amount of time.

(Adopted 7/1/2006)

Rule 8.5.14

Determination

At the conclusion of the hearing, the hearing officer or judge will make a legal determination whether the patient has the capacity to give or withhold informed consent to the administration of antipsychotic medication.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.15

Confidentiality

The proceedings under these rules and all records of these proceedings are confidential as provided in Welfare and Institutions Code section 5328.

(Adopted 7/1/2006)

CHAPTER 6 PROCEDURES FOR ADDITIONAL CONFINEMENT OF PERSONS DEMONSTRATED TO BE DANGEROUS

Rule 8.6.1

Preparation of Petition

A petition must be prepared by County Counsel (pursuant to Welf. & Inst. Code, § 5114) and supported by affidavits describing in detail the behavior of the patient which presents information as provided in Welfare and Institutions Code section 5300.
(Adopted 7/1/2006)

Rule 8.6.2

Filing and Service of Petition

Copies of the petition for post certification treatment and the affidavits in support thereof must be served upon the person named in the petition on the same day as they are filed with the Mental Health Desk.
(Adopted 7/1/2006)

Rule 8.6.3

Affidavits

The court may receive the affidavits in evidence and may allow the affidavits to be read to the jury unless counsel for the person named in the petition subpoenas the treating professional person.
(Adopted 7/1/2006)

Rule 8.6.4

Right to Attorney and Jury Trial

The person named in the petition has the right to be represented by an attorney and a right to demand a jury trial. If the person named in the petition cannot afford an attorney, an attorney will be appointed.
(Adopted 7/1/2006)

**CHAPTER 7
CERTIFICATION
REVIEW HEARINGS**

Rule 8.7.1

Compliance with Welfare and Institutions Code

Certification Review hearings will be held in compliance with Welfare and Institutions Code section 5256 et seq.
(Adopted 7/1/2006; Rev. 1/1/2016)

Rule 8.7.2

Procedures

The Office of Counselor in Mental Health is appointed to administer/or conduct certification review hearings in compliance with Welfare and Institutions Code section 5256 et seq. All persons involuntarily detained in psychiatric hospitals in San Diego County will have a certification review hearing when a 14-day certification has been filed, and when a 30-day certification has been filed. 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 advocate. Hearings may be postponed 48 hours, or until the next regularly scheduled court date.

The following will apply to certification review hearings held in San Diego County:

- A.** Certification review hearings will be conducted at the facility where the person is receiving treatment.
- B.** Certification review hearings must be held in surroundings which allow for safety, quietness, and a reasonable degree of confidentiality. A copy of the Notice of Certification will be at the certification review hearing.
- C.** "Representative of the treating facility" means a registered nurse, psychiatrist, social worker or psychologist. A representative of the treating facility must be present at the hearing to give testimony and answer questions regarding the basis for continued detention and treatment.
- D.** Certification review hearings will be scheduled by the Office of Counselor in Mental Health and the hearing is to be conducted by a Mental Health hearing officer.
- E.** The patient's rights advocate or an attorney for the patient may be present and assist the patient in presenting testimony at the certification review hearing. Other persons including friends and relatives will be admitted to the hearing at the discretion of the court commissioner or hearing officer.
- F.** 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 may be admitted at the hearing and considered by the court commissioner or hearing officer.
- G.** The patient's rights advocate or a retained attorney will meet with the patient prior to the certification review hearing to discuss the commitment process and to assist the patient to prepare for the certification review hearing and to answer questions or otherwise assist the patient as is appropriate.
- H.** The patient has the right to make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision.

I. Certification review hearings will be held for the person who has already requested a writ of habeas corpus hearing if the certification review hearing can be held on a date preceding the writ hearing. A certification review hearing will not be held where a writ of habeas corpus hearing has been held.
(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2016)

CHAPTER 8 WRIT OF HABEAS CORPUS

Rule 8.8.1

Filing Petitions, Orders, Writs

Petitions for a writ of habeas corpus must be filed with the court clerk at the Mental Health Desk. The petition must be filed with an order granting writ of habeas corpus and a writ of habeas corpus. Sufficient petitions will be accepted for filing and file stamped immediately upon their presentation to the clerk.
(Adopted 7/1/2006)

Rule 8.8.2

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, or on a printed form furnished or approved by the clerk of the court.
(Adopted 7/1/2006)

Rule 8.8.3

Hearing

Hearings on a writ will be heard in the Mental Health court, unless otherwise approved by the supervising judge.
(Adopted 7/1/2006)

Rule 8.8.4

Time of Hearing

A hearing on a writ will be scheduled at the time the writ is filed. Counsel for petitioner must notify the facility of the scheduled time for the hearing. Such notification will not replace the actual service of the writ requiring the patient to be present at the time set for the hearing. The hearing will be held within two court days of filing.
(Adopted 7/1/2006)

CHAPTER 9 WRIT OF HABEAS CORPUS FOR MINORS ADMITTED TO PRIVATE PSYCHIATRIC FACILITY BY PARENT

Rule 8.9.1

Writ of Habeas Corpus

A. Applicability

Minors admitted to private psychiatric facilities by a parent are entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section "minor" means any person 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purpose of this section, writs of habeas corpus will be subject to the general provisions of Penal Code section 1473 et seq.

B. Right to Writ

1. Every minor 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility may request a writ of habeas corpus to inquire into the cause of such restraint.
2. A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria are as follows:

- a. The minor is not being detained for evaluation and treatment of any disorder.
- b. Other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.
(Adopted 7/1/2006; Rev. 1/1/2014)

Rule 8.9.2

Procedures

A. Filing. When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor must promptly be provided with a "Petition for a Writ of Habeas Corpus by a Minor". Such form must be filed with the court clerk at the Mental Health Desk at 220 West Broadway within the next work day following completion of the petition.

B. Granting Writ. Upon a finding of probable cause, the following will occur:

1. The judge will endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing will be held within two court days. When a writ is granted, it will be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

2. The court will appoint an attorney to represent the minor at the hearing.

C. Sick and Infirm Petitioner. The writ will be adjudicated in accordance with Penal Code section 1482.

D. Delivery of Writ. The writ will be delivered to the sheriff and will be served upon the facility director without delay.

E. Discharge or Remand. If the writ is discharged, the minor must be released to the custody of their parents or other authority within a reasonable time, who shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulation.

(Adopted 7/1/2006; Rev. 1/1/2016)

CHAPTER 10 ADMISSION OF JUVENILE COURT WARD OR DEPENDENT MINORS FOR ACUTE CARE PSYCHIATRIC HOSPITAL TREATMENT

Rule 8.10.1

Applicability and Definitions

A. This policy is applicable upon the presentation of a dependent minor or ward to a psychiatric facility for the purpose of inpatient evaluation and treatment.

B. This policy is not applicable to non-dependent minors or non-declared wards.

C. Admissions of minors who are not subject to the jurisdiction of the Juvenile Court are governed by the provisions of the LPS Act, or other applicable law.

D. The reference to the term minor or minors as used in this policy refers to a minor child who has been adjudged a dependent or ward pursuant to the applicable provisions of the Welfare and Institutions Code.

E. Any reference in this policy requiring that notice be given requires notice to the following individuals: the minor's attorney, each parent's attorney, the parent, County Counsel, any court-appointed special advocate, and the office of the Patient Advocate.

F. The term "Department" means the Health and Human Services Agency if the minor is a dependent child, or the Probation Department if the minor is a ward.

(Adopted 7/1/2006)

Rule 8.10.2

Involuntary Hospitalization for the Initial 72-hour Period

A. Involuntary hospitalization of minors occurs only under the provisions of Welfare and Institutions Code section 5585 et seq. or 5350.

B. Pursuant to section 5585, and other applicable laws, the facility and its professional staff will determine whether the minor meets the criteria for admission for the initial 72-hour period.

C. Notice will be given by the Department indicating that the minor was presented to the facility for LPS evaluation and was either admitted to the facility, or was deemed not subject to admittance under provisions of section 5585 et seq. If the minor is admitted without the knowledge of the Department, the Department must, upon being informed to the minor's admission, undertake reasonable steps to provide notice required by this policy.

D. If the minor is admitted into the facility, the Department must, in addition to the notice referred to in paragraph C. above, contact the minor's attorney, in person or by phone, within six hours of admission. If the minor's attorney cannot be so contacted, or is otherwise unavailable, such notice must be given to the office of the Patient Advocate.

E. Upon receiving the notice specified in paragraph D. above, the minor's attorney, or patient advocate when attorney is unavailable, must, within 24 hours, do the following:

1. Interview the minor at the facility;

2. Explain to the minor his/her rights, under the LPS Act, all in a manner to assist the minor to understand;

3. Counsel the minor regarding voluntary treatment, as set forth in Welfare and Institutions Code section 6552; and

4. Assure that all procedural requirements are fully met.

F. The Treatment and Aftercare recommendations required by statute must be provided to the Department who will then incorporate the same in the planning process for proper placement of the minor upon discharge from the facility. The Department must inform the Court of any delays or difficulties in receiving the Treatment and Aftercare recommendations from the facility.

G. If, after the expiration of the 72-hour period, the minor is not certified for the 14-day period described in Welfare and Institutions Code section 5250 et seq., and if the minor has not completed the voluntary application referred to in these rules, the minor will be discharged from the facility to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy.
(Adopted 7/1/2006; Rev. 1/1/2016)

Rule 8.10.3

Involuntary Hospitalization After the Initial 72-Hour Period

A. Any further involuntary hospitalization of minors after expiration of the initial 72-hour period will occur only under the provisions of the LPS Act.

B. It is the sole responsibility of the facility and its professional staff to determine whether the minor meets the criteria for further hospitalization under the provisions of the LPS Act.

C. The office of the Patient Advocate or the minor's attorney represents the interests of the minor during any Certification Review Hearing conducted under the LPS Act, in accordance with Welfare and Institutions Code sections 5255-5256.7.

D. At the expiration of the involuntary status under LPS or sooner if the minor is discharged from the facility, the minor must be returned to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy, unless the minor completes the voluntary application referred to in this policy.

(Adopted 7/1/2006)

Rule 8.10.4

Voluntary Hospitalization (Welf. & Inst. Code, § 6552)

A. The term "voluntary hospitalization" means the request, by application, of the minor to seek inpatient mental health services.

B. The term "by application" means the request of the minor to seek or receive inpatient mental health services.

C. The application must be a form in writing, and must include, at a minimum, the following:

1. An acknowledgment by the minor and his/her attorney that the minor understands the need to receive treatment, its probable duration and treatment regimen, and his/her desire to receive such treatment;

2. An acknowledgment that the minor has been made aware of his/her rights, the consequences of waiver, all in a manner the minor is able to understand.

D. An acknowledgment of the right to revoke the application and be discharged pursuant to rule 8.10.4, paragraph J, unless the minor may be involuntarily detained under sections 5585 or 5350.

E. The application, signed by the minor after advisement by the attorney or patient advocate, constitutes the only basis for the facility to accept the minor as a voluntary patient, pending the court order referred to in rule 8.10.4, paragraph F.

F. The duly executed application will be presented to the Juvenile Court ex parte, whereupon the court will make the findings pursuant to section 6552 that the minor be authorized to make a voluntary application. The finding will be based on the evidence presented, but must include at a minimum the following:

1. The voluntary application signed by the minor, together with the attorney certification signed by minor's counsel.

2. A declaration or affidavit by the attending therapist that the minor suffers from a mental disorder; the facility is qualified to treat the disorder; and there is no less restrictive facility available or appropriate which may better meet the needs of the minor.

3. A medication plan that sets forth the category of medications, if any, to be administered to the minor.

G. Upon making the findings referred to in paragraph F, the Juvenile Court will issue an order authorizing the voluntary admission of the minor for treatment. Such an order must be served on all counsel and parties. Such an order shall be construed solely as an authorization for treatment pursuant to section 6552 and does not constitute a court-ordered commitment. Upon being served, any counsel or party may schedule a special hearing for purposes of objecting to the court order. The special hearing must be heard within three (3) judicial days.

H. A court order authorizing the voluntary admission of a minor for treatment does not deprive the minor of the right to revoke the voluntary application.

I. A revocation of the voluntary application must be communicated immediately to the Department who will calendar a special hearing for the next court day and notify all counsel and parties.

J. The minor must be released to the Department after the court hearing referred to in paragraph I, unless the provisions of the LPS Act are satisfied.

(Adopted 7/1/2006)

CHAPTER 11
ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT
FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER
CONTRACT WITH THE COUNTY
("ROGERS" HEARING)

Rule 8.11.1

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (e.g.: County Psychiatric Hospital or Rady Children's Hospital – San Diego, Child and Adolescent Psychiatry Services ("CAPS")). Admissions or detentions not referenced in these procedures will not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq. (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5326.75 et seq. (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq. (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq. (Certification for Intensive Treatment), 5260 et seq. (Additional Intensive Treatment of Suicidal Persons), 5300 et seq. (Post Certification Procedures for Dangerous Persons), or 5350 et seq. (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.2

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see local rule 8.5.6, above) or professional staff from the Office of the Counselor in Mental Health who are appointed as hearing officers as referenced in Welfare and Institutions Code section 5334, subdivision (c).

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.

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated.

D. "Responsible person" means a parent, guardian, or other person having custody of the minor.

E. "Minor's Counsel" means a licensed attorney who will assure that minors are informed of their right to pre-admission hearings, assures that minors who waive the right to a hearing have done so freely, voluntary and intelligently, and represents the minor at any hearings conducted under this chapter.

F. "Work day(s)" means judicial days (or a day when the court is open).

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego.

H. "Professional person" means a psychiatrist, psychologist, social worker with a master's degree, licensed marriage, family and child counselor, or registered nurse.

(Adopted 7/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.3

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, must, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact Minor's Counsel who will either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" must include the following information:

1. Whether the minor suffers from a mental disorder, and if so, its nature;

2. Whether the proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

3. Whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

4. Whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community.

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as new admission to the facility regardless of prior involvement of the minor with the facility.

D. The physician's affidavit must be available at the facility when the Minor's Counsel determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protests the admission at the time of the evaluation for admission, or prior to the time of Minor's Counsel seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 8.11.5 apply.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.4

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, Minor's Counsel must contact the minor by telephone or in person to ascertain whether the minor is protesting the admission and to provide notification of the right to a hearing. Minor's Counsel must certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. Minor's Counsel and the minor must sign the approved "Waiver of Hearing" form (hereinafter referred to as "waiver"), except where the waiver is obtained telephonically, in which case the waiver on page 2 of the waiver will suffice. The signed waiver allows admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee), which is/are also available. The waiver must remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit must be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than Minor's Counsel due to telephone authorization, on the next work day following admission of the minor, Minor's Counsel must personally interview the minor and review the waiver. If in the opinion of Minor's Counsel, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, Minor's Counsel must again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an agreement has been reached pursuant to rule 8.11.5H.

C. If, in the opinion of Minor's Counsel, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, Minor's Counsel must notify facility staff of the need for a hearing, and the facility staff or responsible person must arrange for a hearing through the Office of Counselor in Mental Health. A hearing will be held within five work days from the date Minor's Counsel informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 8.11.5H).

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to Minor's Counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing will be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 8.11.5H.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.5

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Minor's Counsel must promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission will be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. Minor's Counsel will be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health will:

1. Set a date for a hearing which must be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 8.11.5H; and

2. Give notice of the hearing to the following by telephone:

a. Minor's Counsel;

b. The proposed facility;

E. The proposed facility or responsible person must notify the minor of the hearing;

F. The proposed facility must make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. Minor's Counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein precludes the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Minor's Counsel;

I. At the hearing, Minor's Counsel represents the minor. The minor and Minor's Counsel have the right to:

1. Review the Physician's affidavit;

2. Be present at the hearing;

3. Present evidence and call witnesses;
4. Confront and cross-examine witnesses; and
5. Waive the minor's right to be present at the hearing;

J. The hearing will be held in a place convenient to the parties and in an informal setting. The public will be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family members. Hearings will be electronically recorded, and all records will be held as confidential as provided in Welfare and Institutions Code section 5328;

K. Hearings will be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules of evidence. The decision of the hearing officer will be based on the preponderance of evidence. All of the following will be established at the hearing:

1. The minor suffers from a mental disorder;
2. The proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;
3. The proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and
4. If the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer will make findings in writing to support the decision. Following the hearing, the hearing officer will issue an order authorizing admission to the recommended or alternate facility or an order denying admission. Copies of the findings and order will be provided to all the following:

1. The minor;
2. Minor's Counsel;
3. The responsible person upon request; and
4. The proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment should be available to present testimony at the hearing;

M. Nothing in these procedures requires a facility to accept a minor;

N. The minor may be admitted to the authorized facility within 15 calendar days following the hearing.
(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014; Rev. 1/1/2016)

Rule 8.11.6

Facility Review

Facilities accepting minors under this procedure must provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews must appear in the minor's records at least monthly.
(Adopted 7/1/2006)

Rule 8.11.7

Confidentiality

Confidentiality must be in accord with Welfare and Institutions Code section 5328 et seq. The hearing officer will be considered a "court" as referenced in Welfare and Institutions Code section 5328, subdivision (f).
(Adopted 7/1/2006)

Rule 8.11.8

Records

Records must be maintained as provided for by law.
(Adopted 7/1/2006)

Rule 8.11.9

Writ of Habeas Corpus

If admission is authorized, Minor's Counsel must advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing will be in the Mental Health Division.
(Adopted 7/1/2006; Rev. 1/1/2014)

Rule 8.11.10

Filing a Writ of Habeas Corpus

Nothing herein deprives the minor of the right to seek a writ of habeas corpus.
(Adopted 7/1/2006)

CHAPTER 12 APPOINTED COUNSEL, FEES, COSTS

Rule 8.12.1

Representation of Patients in Mental Health Court

If the patient has not retained private counsel, the Public Defender is appointed to represent patients in the Mental Health Court in accordance with the authorization of the Board of Supervisors. When the Public Defender has a conflict in representing a patient, then the Alternate Public Defender will be appointed. If the Alternate Public Defender cannot represent the patient, then the Office of Assigned Counsel will designate counsel to represent the patient. If Office of Assigned Counsel is unable to appoint counsel, then the Mental Health judge will appoint counsel. (Adopted 7/1/2006; Rev. 1/1/2017)

Rule 8.12.2

Private Conflict Counsel

A. Services Subject to Compensation. In any case where counsel has been appointed to represent a person in Mental Health Court proceedings, and where payment of attorney fees will be made by the County of San Diego through Office of Assigned Counsel, the determination of which attorney services are to be compensated, and the amount of reimbursement, will be made by the Office of Assigned Counsel, consistent with the policies and procedures of the Office of Assigned Counsel effective at the time such services are rendered.

B. Costs Subject to Reimbursement. In those cases where costs incurred by appointed counsel, including mileage, will be reimbursed by the County of San Diego through Office of Assigned Counsel, the determination of which costs are subject to reimbursement, and the amount of reimbursement, will be made by Office of Assigned Counsel.

C. Notice of Termination of Contract. Where an attorney appointed to represent a patient in the Mental Health Court pursuant to policies and procedures of Office of Assigned Counsel discontinues providing such services, notice must immediately be served by such attorney on the Public Conservator and Office of Assigned Counsel. Proof of service and a copy of the notice must be filed at the Mental Health Desk and the Office of the Public Defender. (Adopted 7/1/2006; Rev. 1/1/2017)

Rule 8.12.3

Patient Reimbursement of Appointed Counsel's Fees and Costs

A. Determination. In those cases where counsel has been appointed to represent the patient, and it is believed that the patient has sufficient funds to pay attorneys' fees and costs, the Mental Health Court judge, upon a timely request by counsel and notice to the conservatee, will determine which legal services and costs, and the amounts, are to be reimbursed by the patient.

B. Stipulation. Reimbursement to the County for fees and costs can be ordered based on the stipulation of the parties.

C. Procedural Requirements - Notice to Patient

1. Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any, have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

2. It is the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship, to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of cost incurred for services rendered relative to any mental health law proceedings that takes place after the filing of said petition and during the pendency of the conservatorship.

D. Request for Conservatee to Pay Fees and Costs

1. Counsel appointed for the conservatee may submit a request to the Mental Health Court judge that the conservatee pay legal fees and/or reimburse the counsel for costs. Appointed counsel (a) may make the request in open court at the time of the subject hearing in the presence of the conservatee; or (b) may submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee and the conservator in accordance with the established notice procedures as stated in "Notices" of these rules. In the notice, counsel for the conservatee must specify the amount of the attorney fees and costs being requested and sufficient details to show the reasonableness of the requests.

2. Counsel appointed for the conservatee has the burden of proving: (a) that the conservatee has sufficient funds to pay the requested amount of attorney fees and costs, and (b) the reasonableness and accuracy of the amounts requested.

3. In ruling on the request, the Mental Health Court judge will: (a) determine whether the conservatee has sufficient funds, and (b) set the amount of fees to be paid and the amount of costs to be reimbursed. The judge will consider the amount customarily awarded in routine cases. (Adopted 7/1/2006)