

## **CHAPTER 21 MISCELLANEOUS**

### **Rule 4.21.1**

#### **Withdrawal of Counsel of Record**

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and to attorneys for guardians of the estate, conservators of the estate, personal representatives in estates, and trustees of trusts under court supervision.

**A.** Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

**B.** The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will be relieved only by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545. Court approval may be obtained by a noticed motion.

**C.** Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the notice required by Probate Code section 1213.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2014)

### **Rule 4.21.2**

#### **Appointment of Probate Referees**

**A.** Probate referees will be appointed in rotation.

**B.** A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

**C.** A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

### **Rule 4.21.3**

#### **Petitions Involving Charities**

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Renum. 1/1/2014; Rev. 1/1/2016)

### **Rule 4.21.4**

#### **Dismissal of Proceedings**

**A.** Once a fiduciary has been appointed by the court in decedent's estates, conservatorships of an estate, and guardianships of an estate, the entire proceeding may not be dismissed except upon duly noticed petition and order of the court. If a fiduciary has not yet been appointed, refer to subsection C.

**B.** Once a fiduciary has been appointed by the court in conservatorships of the person and guardianships of the person, unless the matter has terminated by operation of law, the entire proceeding may not be dismissed except upon duly noticed petition and order of the court. If a fiduciary has not yet been appointed, refer to subsection C.

**C.** Petitions may be dismissed only upon an order of the court. Such order may be made upon oral request prior to commencement of trial, with such notice as the court requires; or by stipulation signed by the parties and presented to the court; or by noticed petition or application, which may be submitted to the court ex parte with proper notice.

**D.** Individuals may be dismissed from a petition or proceeding upon the submission of Judicial Council form CIV-110 Request for Dismissal and upon approval of the assigned judicial officer. Alternatively, such requests can be made orally, prior to commencement of trial with such notice as the court requires.

**E. Objections and Responses.** An objection and/or response may be withdrawn by the party originally filing it upon filing of a verified statement of withdrawal, and providing notice of such withdrawal to all persons entitled to notice of the original filing.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2011; Rev. 1/1/2013; Rev. & Renum. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2019)

#### **Rule 4.21.5**

##### **Disclosure by Conservators, Guardians, and Attorneys**

Conservatees and wards generally are not in a position to give their informed consent to representation by attorneys, or the appointment of a conservator and/or guardian. To avoid the appearance of a conflict of interest in duty, a conservator, proposed conservator, guardian, proposed guardian, and/or attorney who appears in matters involving a conservatee, ward, or their estate, must disclose all present and past relationships to the court at their earliest opportunity in the following circumstances:

**A. Conservators.** A person who is or has served in the past as a conservator of the individual or estate which is the subject of the pending proceeding (trust or decedent's estate) must disclose all present and past relationships.

**B. Attorneys.**

1. An attorney for a conservatee or proposed conservatee, or a conservator or proposed conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

2. An attorney for a ward or proposed ward, or a guardian or proposed guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

3. In complying with this rule an attorney shall not be required to violate an existing attorney-client privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

**C. Guardians.** A person who is or has served in the past as a guardian of the individual or estate which is the subject of the pending proceeding (conservatorship, trust, or decedent's estate) must disclose all present and past relationships.

**D. Court-appointed attorneys and guardians ad litem** generally are appointed on a rotational basis. At times, the court-appointed attorney or guardian ad litem may have represented another party in the proceeding. The court appointment is conditional on a conflict check by the proposed court-appointed attorney or guardian ad litem. The appointment is effective 10 days after the date of mailing of the order, unless written communication is received by the court investigator support desk indicating that a conflict exists. Once the appointment is effective, an ex parte application must be made to discharge appointed counsel.

**E. Proof of Insurance.** In addition to submitting the appropriate Judicial Council form(s), attorneys seeking initial appointment or reappointment as court-appointed attorneys in probate conservatorships and guardianships must submit a report of insurance setting forth the amount of the insurance coverage and its effective dates as well as the Court-Appointed Attorney Cover Sheet (SDSC form PR-150).

(Adopted 1/1/2006; Rev. 1/1/2013; Renum. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2019)

#### **Rule 4.21.6**

##### **Reserved for Future Use**

(Adopted 1/1/2012; Rev. 1/1/2013; Rev. & Renum. 1/1/2014; Del. 1/1/2016)

#### **Rule 4.21.7**

##### **Elisors**

Where one of the parties will not or cannot execute a document necessary to carry out a court order, the clerk of the court, or his or her authorized representative or designee, may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. (See rules 4.7.5 and 4.7.6 for Ex Parte requirements). When applying for an appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or Clerk's Designee" as the elisor and indicate for whom the elisor is being appointed and in what capacity they are to sign the document. The application must not set forth a specific court employee. The order must expressly identify the document being signed and a copy of the document must be attached to the proposed order. The original document, presented for signature by the elisor, must match the copy of the document attached to the proposed order. The declaration supporting the application must include specific facts establishing the necessity for the appointment

of the elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary public to be present when the elisor signs the document(s).

(Adopted 1/1/2015; Rev. 1/1/2016)

**Rule 4.21.8**

**Disclosure of Change in Licensing Status of Licensed Private Fiduciary**

A Licensed Private Fiduciary who knows or reasonably should know that his or her license has expired or has been suspended or revoked, within five court days after he or she obtains such knowledge, must file a written declaration setting forth his or her license status in every open case in which he or she has been appointed by the court to serve, and must serve a copy of each such declaration on the Operations Manager of the Probate Division at the Probate Business Office.

(Adopted 1/1/2016)