

## **CHAPTER 5 NOTICES**

### **Rule 4.5.1**

#### **General**

- A.** All notices must include the complete caption of the pleading.
- B.** All petitions must allege the names and addresses of all persons entitled to notice, including persons who have submitted Requests for Special Notice, so that the court may determine the adequacy of notice given.  
(Adopted 1/1/2012; Renum. & Moved on 1/1/2014; Rev. 1/1/2016)

### **Rule 4.5.2**

#### **Additional Notice Requirements**

- A.** Under the provisions of the Probate Code, the court may require additional notice in any matter.
- B.** Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.
- C.** Additional notice must include the full caption, as well as the time and place of hearing. The court may require a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.
- D.** The probate clerk will prepare and post the notice as required pursuant to Probate Code section 10308, subdivision (c). The clerk is not responsible for publications or mailings.
- E.** Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.
- F.** Thirty (30) days "Notice of Hearing" to the Department of Health Services is required on petitions requesting termination, approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.
- G.** Parties filing a new action must serve on all parties a copy of the "Notice of Eligibility to e-File and Assignment to Imaging Department" with the petition or other case initiating pleading. A copy of this notice will be provided to the filing party by the court clerk when case originating filings are processed.  
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013; Renum. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2017; Rev. 1/1/2018)

### **Rule 4.5.3**

#### **Proof of Service**

- A.** It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code section 1260 and Code of Civil Procedure section 1013, subdivision (a), the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.
- B.** Where notice must be served other than by regular mail, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice or by either personal or electronic service.
- C.** Any counsel seeking to be relieved as counsel of record for a fiduciary or a person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or a person objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.  
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 1/1/2014; Rev. 1/1/2019)

### **Rule 4.5.4**

#### **Notice Re Letters of Special Administration**

- A petition for letters of special administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.  
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010; Renum. 1/1/2014)

#### **Rule 4.5.5**

##### **Notice to Persons Requesting Special Notice**

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2014)

#### **Rule 4.5.6**

##### **Notices to Trust Beneficiaries**

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2014)

#### **Rule 4.5.7**

##### **Notice to Creditors**

**A.** Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

**B.** In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See rule 4.15.3.)

**C.** When the accounting is waived and the estate is insolvent, notice must be given as provided in Probate Code section 1220 to each creditor who has filed a claim that is allowed or approved but is unpaid in whole or in part.

**D.** When a petition to terminate proceedings is filed pursuant to Probate Code section 12251, notice must be given as provided in Probate Code section 1220 to each creditor who has filed a claim in the estate.

(Adopted 1/1/2012; Former Rules 4.5.6 & 4.5.7 moved to 4.5.1 on 1/1/2014; Formerly Rule 4.12.1 - Rev. & Renum. 1/1/2019)

#### **Rule 4.5.8**

##### **Compliance with Notice – Medi-Cal and California Victim Compensation and Franchise Tax Board**

Before the court will authorize distribution from a decedent's estate, there must be a showing of compliance with the notice requirements of Probate Code section 9202 to:

**A.** The Director of Health Care Services or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Care Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

**B.** The Director of the California Victim Compensation Board or a showing that the notice thereunder is not required because an heir or beneficiary is not confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm or other local correctional facility.

**C.** The Franchise Tax Board, for estates for which letters were issued on or after July 1, 2008.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009; Renum. 1/1/2013; Rev. 1/1/2015; Rev. 1/1/2018)

#### **Rule 4.5.9**

##### **Notice to Prior Representative or Counsel or Attorney Firm**

If there has been a change of personal representative or a substitution of counsel, or a change in attorney firms, notice of hearing must be given to such prior representative or counsel or firm of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

**A.** A waiver of notice executed by the prior personal representative or counsel or firm is on file; or

**B.** A written agreement on the allocation of fees and/or commissions is on file or included in the petition; or

**C.** The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2013; Rev. 1/1/2014)

**Rule 4.5.10****Conservatorship Notices**

**A.** Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

**B.** In circumstances where the conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009; Renum. 1/1/2013)