

**DIVISION IV  
PROBATE**

**CHAPTER 1  
DEPARTMENTAL ADMINISTRATION AND ORGANIZATION**

**Rule 4.1.1**

**Address, Phone and Hours for Probate Examining Division**

The addresses, phone numbers, hours and examiners' email addresses for the Probate Court can be found at the court's website, <http://www.sdcourt.ca.gov>.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2013)

**Rule 4.1.2**

**Filing Location**

**A.** Probate matters shall be filed in the Probate department located in the Madge Bradley Building at 1409 Fourth Avenue, San Diego, CA 92101.

**B.** Documents may be filed electronically to initiate new cases or to file subsequent documents in cases that have been imaged by the court. If a case has been imaged by the court, the case title will be updated to reflect "[IMAGED]". Parties who wish to e-file must comply with the Electronic Filing Requirements posted on the Court's website.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

**Rule 4.1.3**

**Viewing Paper and/or Electronic Files in the Probate Business Office.**

Files may be reviewed in the business office in accordance with the California Rules of Court 2.400 (a) and the following:

**A.** Any person requesting to view a file is required to submit a valid California driver's license or other photo identification card;

**B.** Cases must be requested by case number, using form SDSC ADM-11;

**C.** If requested in non-sequential order, a maximum of ten cases per day will be pulled by the clerk;

**D.** If requested in sequential order, a maximum of fifty cases per day will be pulled by the clerk;

**E.** No random searches will be accommodated.

**F.** Use of the Register of Actions Kiosk (ROAK) will be limited to 20 minutes if there are other members of the public waiting to use the terminal.

**G.** Cellular phone use is prohibited within the viewing room.

(Adopted 1/1/2014; Rev. 1/1/2015)

**CHAPTER 2  
TESTAMENTARY DOCUMENTS; CONSOLIDATION; SANCTIONS**

**Rule 4.2.1**

**Backing on Papers Filed**

All wills and other testamentary documents submitted for filing must be attached to a stiff backing cover, the right side margin of which contains the document's caption (title) which must be fully visible.

(Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008.)

**Rule 4.2.2**

**Consolidation with the Lowest Number and Notice of Related Case/Petition**

**A.** Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

**B.** Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

C. Rules of Court, rule 3.300, respecting the requirements for Notice of Related Case, applies to all petitions or applications filed with the Probate Divisions of the Court.  
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2009)

### **Rule 4.2.3**

#### **Sanctions**

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, without good cause or substantial justification, the court, on motion of a party or on its own motion, after notice and hearing, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or as otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.  
(Adopted 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2012)

## **CHAPTER 3**

### **PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING**

### **Rule 4.3.1**

#### **Format Requirements and Copies**

A. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

B. A "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated near the case number in the caption of all subsequently filed documents related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice.

C. Conformed Copies. The court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

### **Rule 4.3.2**

#### **Electronic Filing (e-Filing)**

##### **A. e-Filing Requirements**

1. All documents electronically filed must be submitted in a PDF format using Adobe Acrobat version 7 or higher and must also be in a text searchable format, i.e. Optical Character Recognition (OCR).
2. Fillable forms are not accepted.
3. Each document should be filed as a stand-alone document.
4. Documents that contain exhibits must be bookmarked.
5. Notices of lodgment shall not have the lodged documents attached. The submitting party must provide the business office with hard copies of the lodged documents with a copy of the notice of lodgment and must include the e-Filing Transaction ID # noted in the upper right hand corner.
6. When submitting an original Will to the business office for a Petition for Probate of Will and for Letters Testamentary or Letters of Administration with Will Annexed that was e-Filed, the submitting party must provide a cover letter that includes the case number assigned to the petition.
7. If submitting a proposed order in the same transaction as other documents (i.e. petitions or other subsequent documents, an attorney service must be noted in the, "Message to the e-Filing Clerk," section for a conformed copy to be returned.
8. Any document that is filed on a day that the Court is closed or after 5:00 p.m. shall be deemed to have been filed on the next court business day.
9. Original signatures are not required on e-Filed documents, but must be maintained by the filing party, pursuant to CRC 2.257.

##### **B. Documents Ineligible for e-Filing**

1. Wills
2. Letters of Appointment

3. Bonds
4. Out-of-State Commission Subpoena
5. Request for Payment of Trust Funds
6. Writs
7. Abstracts
8. Compromise of Minor Claim
9. Settlement Conference Briefs
10. Confidential Documents Lodged Conditionally Under Seal
11. Affidavit re: Real Property of Small Value
12. Warrants

(Adopted 1/1/2015)

#### **Rule 4.3.3**

##### **Filing Documents for Calendared Matters**

**A.** The hearing date, time, department, and ROA number are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

**1.** On all pleadings filed after the initial case originating filing, the words “IMAGED FILE” shall be placed in all capital letters immediately under the title of the pleading for the duration of the case.

**2.** The paper filings that are imaged and stored electronically will be physically stored by the Court for thirty days after filing, after which time they will be shredded and recycled, except for original wills and bonds which will be physically retained by the Court for the period required by law. During this thirty-day period, these documents will not be stored in a manner that will allow a party or its attorney to access them.

**B.** Petitions, Applications and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 5:00 p.m. three full court days prior to the hearing. This does not include the date of filing or the date of hearing (e.g. for a court hearing on Wednesday, the documents must be filed by 5:00 p.m. the preceding Thursday). Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

**C.** Accounting Format. Accounting schedules must be attached to the Petition. They may not be lodged. You must lodge originals of account statements, closing escrow statements, and bill statements for a residential or long-term care facility in support of Probate Code section 2620. Lodged documents will not be imaged or made part of the Court file.

**D.** Form and Lodging of Exhibits. Other than accounting schedules and copies of documents sought to be approved, construed or modified by the court, if the exhibits accompanying a petition, motion, or other filing exceed ten pages cumulatively, on non-imaged cases they must be lodged with the court, rather than attached to the pleadings, which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. For e-filed and imaged cases no limit will be enforced with regard to number of pages.

**E.** The following items must accompany lodged material: (1) An original notice of lodgment, which includes a numbered listing of all of the items lodged; (2) The numbered exhibits, with a copy of the notice of lodgment and form SDSC PR-163 (should be printed on pink paper) on top; and (3) A means of return, as specified in item F., below. The notice of lodgment must be filed with the court. An additional copy may be submitted to be conformed and returned. The lodgment and notice of lodgment must be served on all parties.

**F.** Return and Retention of Lodged Exhibits. Lodged materials will be returned to the tendering party after the resolution of the calendared matter, unless the party requests their destruction. Therefore, when submitted, lodgments must be accompanied either by a stamped, self-addressed envelope or an attorney service pick-up slip. Following the return of the lodged documents by the court, the tendering party should retain them until the applicable appeal period has expired.

**G.** Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rule of Court 2.304 is not available.

**H.** A copy of the Trust and any amendments must be submitted for filing with all trust cases. The copy of the Trust and/or amendments must be submitted with a coversheet. The coversheet may indicate that the Trust is confidential and will then be retained at a security level that is not available to the general public. Any after filed petitions shall reference the date of filing of the copy of the Trust.

**I.** On Petitions for Probate of Will and for Letters Testamentary or Letters of Administration With Will Annexed a copy of the receipt for deposit must be provided.

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

#### **Rule 4.3.4**

##### **Use of Judicial Council Forms**

**A.** The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

**B.** On non-imaged cases, when printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2012; Rev. & Renum. 1/1/2015)

#### **Rule 4.3.5**

##### **Affidavits and Declarations Under Penalty of Perjury**

**A.** A declaration must meet all of the requirements of Code of Civil Procedure section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

"I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date].

\_\_\_\_\_  
[signature of fiduciary]

\_\_\_\_\_  
[name of fiduciary]"

**B.** If such declaration is executed within California, it may take either the above form or the following form:

"I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

\_\_\_\_\_  
[signature of fiduciary]

\_\_\_\_\_  
[name of fiduciary]"

**C.** Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

"I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe them to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

\_\_\_\_\_  
[signature of officer]

\_\_\_\_\_  
[name of officer]"

(Adopted 1/1/1990; Renum. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015)

#### **Rule 4.3.6**

##### **Complete Address in Petition or Report**

**A.** Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

**B.** If a Post Office Box is the only known address, a statement of due diligence must accompany the petition or report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015)

#### **Rule 4.3.7**

##### **Multiple Minors and Conservatees**

**A.** Where several minors share the same parent, a Petition for Guardianship may be filed under one case number and include all the minors.

**B.** Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if all of the assets of the estate are community property. If both petitions are approved, separate Order and Letters must be submitted for each conservatee. In all other cases, the conserved husband and wife must have separate case numbers.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2015)

## **CHAPTER 4 SETTINGS, ASSIGNMENTS AND CONTINUANCES**

#### **Rule 4.4.1**

##### **Calendar Settings of Probate Matters**

**A.** All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

**B.** Calendar times may be obtained from the court's website at <http://www.sdcourt.ca.gov> or by calling the Probate Court Business Office.

**C.** Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

**D.** All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with the appropriate completed form outlining the duties of the proposed fiduciary. The duties must be signed by the proposed fiduciary.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

#### **Rule 4.4.2**

##### **Probate Hearing Once Noticed Cannot be Advanced**

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

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

#### **Rule 4.4.3**

##### **Continuances of Hearings on Petitions in Uncontested Matters**

**A.** Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioner if self-represented, or by petitioner's counsel.

**B.** A one-week continuance will be granted only for good cause.

**C.** A first and second continuance of two weeks or more may be obtained by contacting the Probate Examiner. After two continuances have been granted, further continuances must be approved by the court.

**D.** For matters set forth in subsection 1 below, Probate Examiners have authority to continue the hearing date on non-contested petitions. However, Probate Examiners do not have authority to grant requests for continuance that are made later than 5:00 p.m. three court days prior to the hearing, or which are set forth in subsection 2 below. For non-contested matters, counsel seeking a continuance must inform all counsel and any parties who may appear of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

##### **1. Matters Examiners CAN Continue**

- a.** Petition for Probate;
- b.** Petition to Determine Succession to Real Property;
- c.** Spousal Property Petition;
- d.** Accountings/Waiver of Accountings;
- e.** Status Report;
- f.** 850 Petition;
- g.** Petition for Appointment of Temporary Conservator;
- h.** Petition for Appointment of Temporary Guardian;

- i. Petition for Appointment of General Guardian (If there is no Temporary Guardianship in place);
  - j. Petition for Termination of Guardianship;
  - k. Most miscellaneous petitions;
  - l. Review Hearing- first continuance only;
- 2. Matters Examiners CANNOT Continue**
- a. Sale of Real Property;
  - b. Petition for Appointment of General Conservator;
  - c. Petition for Removal of Trustee;
  - d. Petition for Removal of Personal Representative;
  - e. 3100 Petition;
  - f. Order to Show Cause;
  - g. Motion;
  - h. Ex Parte Petition

**F.** A preapproved matter will be continued if an objection is made at time of hearing and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

**G.** For contested matters, counsel seeking the continuance must obtain the advance agreement of all parties who have appeared in the matter prior to making a continuance request.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev & Renum. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2015)

#### **Rule 4.4.4**

##### **Setting Matters Already on File**

**A.** “Off Calendar.” A petition may be taken “off calendar” by the petitioner or by order of the court. Taking a petition “off calendar” vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. In the absence of such a timely request, the matter will be deemed dismissed without prejudice. A petition may not be re-set for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law.

**B.** If the matter was previously set and taken off calendar because of defects or nonappearance, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013)

#### **Rule 4.4.5**

##### **Telephonic Appearances**

In accordance with the provisions of the California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party who intends to appear telephonically must provide notice as specified in the California Rules of Court, rule 3.670(g). The party also must arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).

(Adopted 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012)

## **CHAPTER 5 NOTICES**

#### **Rule 4.5.1**

##### **General**

All notices must include the complete caption of the pleading.

So that the court may determine the adequacy of notice given, all petitions must allege the names and addresses of all persons entitled to notice, including persons who have submitted Requests for Special Notice.

(Adopted 1/1/2012; Renum. & Moved on 1/1/2014)

#### **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 approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.

**G.** Parties filing a new action shall serve on all parties a copy of the "Notice of 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)

#### **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 personal service.

**C.** Any counsel seeking to be relieved as counsel of record for a fiduciary or a person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 1/1/2014)

#### **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**

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

(Adopted 1/1/2012; Former Rules 4.5.6 & 4.5.7 moved to 4.5.1 on 1/1/2014)

#### **Rule 4.5.8**

##### **Compliance with Notice – Medi-Cal and California Victim Compensation and Government Claims Board**

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

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

**B.** The Director of the California Victim Compensation and Government Claims Board or a showing that the notice thereunder is not required because an heir 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)

#### **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)

## **CHAPTER 6 CALENDAR NOTES AND HEARINGS**

#### **Rule 4.6.1**

##### **Availability of Probate Examiner's Notes and Clearing of Defects**

**A.** Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

**B.** The notes are available on the San Diego Superior Court website, <http://www.sdcourt.ca.gov>. When the examiner receives additional pleadings and updates the notes, the new notes will be posted to the website.

**C.** Persons who do not have access to the internet may request that the notes be mailed by attaching SDSC PR-114, "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.



**D.** After checking the notes, counsel and self-represented parties are encouraged to contact the assigned Probate Examiner with any questions or explanations that may assist in the clearing of any defects. Examiners may be contacted by email, phone, or in person. Instructions and hours for contacting examiners can be found on the court's web site at <http://www.sdcourt.ca.gov>.

**E.** Amended petitions supersede any prior petitions and will be set for hearing in due course.  
(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

#### **Rule 4.6.2**

##### **Telecourt**

If an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such date, time and telephone number as designated by the probate judge and posted on the court's website, <http://www.sdcourt.ca.gov>, to seek pre-approval or a continuance. Counsel must be on the phone line when the call is answered, prepared with case number and hearing date and time.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2012)

#### **Rule 4.6.3**

##### **Appearances**

**A.** An appearance is required on all matters not preapproved, even if no defects appear on the Examiner's Notes.

**B.** No appearance is necessary if the matter has been continued by the Probate Examiners or in telecourt.

**C.** If a continuance request will be made at the hearing, all counsel must appear, unless all counsel have agreed in advance to the continuance and have designated one counsel to appear and make the request.  
(Adopted 1/1/2012)

## **CHAPTER 7 ORDERS AND BONDS**

#### **Rule 4.7.1**

##### **Preparation of Orders**

**A.** In guardianship, conservatorship and decedent's estate appointment hearings, the petitioner shall prepare and submit the applicable mandatory Judicial Council order for appointment form as follows:

**1.** In conservatorship and decedent's estate matters, the proposed order shall be submitted to the Probate Business Office three weeks prior to the hearing.

**2.** In guardianships, a proposed order shall be submitted at the time of hearing. Self-represented litigants shall bring a self-addressed stamped envelope on the date of the hearing. Represented litigants shall bring a prepared order and a means of return on the date of the hearing.

**B.** In non-appointment hearings and non-contested matters, the minute order shall constitute the order of the court unless:

**1.** A mandatory judicial council form exists;

**2.** The court's minute order indicates that a formal written order is to be prepared; or

**3.** A party desires a formal order.

**a.** if a party desires a formal order following a hearing on a petition, the order must be submitted to the Probate Business Office three weeks prior to the hearing, along with the following items: 1) Submitted Order Coversheet (SDSC PR-162, should be printed on blue paper); 2) Proposed Order; 3) Copies for conforming, together with a means of return for conformed copies; 4) Check for certified copies, if applicable; and 5) Bond and/or Letters, if applicable.

**b.** if a party desires a formal order following a hearing on a motion, the party must notify the court at the time of the hearing that a formal order is desired and must thereafter submit a formal order in accordance with the procedure set forth in the California Rules of Court, rule 3.1312.

**C.** In all contested matters, unless otherwise ordered by the court, counsel for the prevailing party must prepare and submit a formal order, using a procedure analogous to the procedure for motions as set forth in Rule 3.1312 of the California Rules of Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

#### **Rule 4.7.2**

##### **Material to be Included in Probate Orders**

**A.** All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

**B.** Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

**C.** In no case may any material appear after the signature of the judge.

**D.** At least two lines of text must be included on the page containing the judge's signature.

**E.** While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

**F.** Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

**G.** All orders for distribution must contain the following:

1. A list of the assets on hand;

2. The beneficiaries under the will or, in the event of intestacy, the heirs at law and their specific relationship to the decedent. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest must be fully set forth.

3. The person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

4. A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

5. A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

6. The fees and commissions allowed by the court.

7. The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution"

8. The order should not include language that the fiduciary is discharged and the bond exonerated. This can only be ordered upon the filing of proper receipts and the Ex Parte Petition and Order for Final Discharge. It is acceptable to include language that the fiduciary may be discharged and bond exonerated upon the filing of proper receipts and the Ex Parte Petition and Order for Final Discharge.

**H.** The court will only approve actions presented in a petition. The order should **not** include language that all acts taken by the representative are approved. It is acceptable to include language that all acts reported in this petition are approved.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

#### **Rule 4.7.3**

##### **Riders and Exhibits**

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

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

#### **Rule 4.7.4**

##### **Orders for Continuing Payment Must Have a Maximum Time Limit**

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of \_\_\_\_\_ and continue for a period not to exceed \_\_\_\_\_ months or until further order of the court, whichever shall first occur."

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

#### **Rule 4.7.5**

##### **Application for Ex Parte Orders - Generally**

- A. All ex parte applications must comply with rule 3.1200 et seq. of the California Rules of Court.
- B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge.
- C. Any request must be accompanied by: (1) form SDSC PR-136, Probate Ex Parte Coversheet & Instructions (should be printed on green paper); (2) the ex parte petition; (3) supporting declaration; (4) declaration regarding notice; (5) a separate order setting forth the specific relief sought in the petition; and (6) appropriate fees. Points and authorities may be filed to support the application.
- D. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.
- E. Notice.
  - 1. Contested applications and applications regarding discovery motions in accordance with departmental rules require an appearance. When an appearance is required, a written declaration of notice or of the reason it was not given as required by California Rules of Court, rule 3.1202(a) must be filed pursuant to departmental rules. The court may take the ex parte matter off calendar for failure to file the notice declaration.
  - 2. Uncontested applications (dropped) do not require an appearance. Notice must comply with California Rules of Court, rule 3.1202(a) and accompany the dropped application.
- F. Dropped ex parte applications must be filed pursuant to departmental rules.  
(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

#### **Rule 4.7.6**

##### **A. Matters Which May be Heard Ex Parte**

Matters which may be heard ex parte include the following:

- 1. Appointment of Elisor;
- 2. Appointment of Guardian Ad Litem;
- 3. Authorization to Invest in Units of a Common Trust Fund
- 4. Authorization to Enter into or Extend Exclusive Listing Agreement for Sale of Real Property;
- 5. Extend/Reissue Letters;
- 6. Extend Time to File Receipt and Acknowledgement of Order for the Deposit of Money into Blocked Account;
- 7. Extension of Time to Comply with a Notice of Failure to Perform Duties;
- 8. Guardianship and Conservatorship Investments;
- 9. Increase in Bond;
- 10. Order Shortening Time;
- 11. Place Funds in Blocked Account;
- 12. Preliminary Distribution of Estate Pursuant to Probate Code section 11623 on Proof that Inventory and Appraisal has been Filed;
- 13. Request for Continuance of Mandatory Settlement Conference;
- 14. Request for Dismissal;
- 15. Sale of Depreciating Assets;
- 16. Sale of Securities;
- 17. Waiver of Investigation (Guardianship); and
- 18. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

##### **B. Matters Which May be Heard Ex Parte and Carry an Additional Petition Fee**

Matters which may be heard ex parte and carry an additional fee for the underlying petition include the following:

- 1. Appointment of Temporary Conservator or Guardian. Such applications may be made without five days' notice to the proposed conservatee only for good cause and only if the Petition for Appointment of the General Conservator or Guardian is on file or is filed with the Petition for Appointment of the Temporary. See Local Rules 4.18.2 and 4.19.1 for further requirements;
- 2. Appointment of Special Administrator;
- 3. Authority to Sell Residence;
- 4. Transfer of Deposited Will; and
- 5. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. & Renum. 1/1/2012; Rev. 1/1/2015)

#### **Rule 4.7.7**

##### **Communications with the Court**

Documents presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are subject to California Rules of Court, rule 7.10(c). (See Code of Judicial Ethics.)

(Adopted 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

#### **Rule 4.7.8**

##### **Nunc Pro Tunc Orders Correcting Clerical Errors**

**A.** If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order.

**B.** The order must not take the form of an amended order. Local Forms SDSC PR-137 (Declaration to Correct Order Nunc Pro Tunc) and SDSC PR-138 (Nunc Pro Tunc Order) are available on the court's website and may be used. If declaration and order are submitted on pleading, the pleading must substantially set forth the language used in the local forms.

**C.** The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

**D.** To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure.

**E.** The date of the order must be left blank for the court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order]."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

#### **Rule 4.7.9**

##### **Bond Requirements/Blocked Accounts**

**A.** Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

**B.** Bond Review Hearing. If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2013)

#### **Rule 4.7.10**

##### **Bonds; Additional Bond**

**A.** In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

**B.** Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.

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

#### **Rule 4.7.11**

##### **Deposited Funds**

**A.** Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.

**B.** Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within fifteen court days following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When there is good cause for failure to comply with paragraph D, a party may present an ex parte petition to extend the time to return the receipt.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

## **CHAPTER 8 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS**

### **Rule 4.8.1**

#### **Letters Issued in Decedent's Estates**

A. Letters issued in a decedent's estate will expire eighteen months after the date the underlying petition is approved. Thereafter, letters may be issued or reissued upon the discretion of the court.

B. Eighteen months after the issuance of letters, if the final accounting or the report required by Probate Code section 12200 has not been filed, a review hearing will be set. A notice of Failure to Perform Duties will be mailed to the attorney of record and the personal representative.

C. At the time of the review hearing, if the final accounting or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and may be required to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 177.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.

(Adopted 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

### **Rule 4.8.2**

#### **Allegations in Petitions Re: Beneficiaries**

All petitions pertaining to the administrative duties of a fiduciary must include:

A. The nominated trustee of a trust created by a will in the list of beneficiaries and identified as the trustee on that list. (See also Rule 4.5.5.)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil must be listed.

D. The street address and relationship of the proposed personal representative to the decedent.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

### **Rule 4.8.3**

#### **Notice to Foreign Consul**

A. When notice is required to be given to foreign consul, the identity of the proper consul must be set forth in Petition for Probate.

B. If an heir of an intestate estate or a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

C. Notices pursuant to this rule will be required only for an original petition for probate. This notice is in addition to that given to heirs and devisees under section 8110 and fifteen-day notice is required.

**D.** Information as to whether a country has recognized diplomatic or consular representation in the United States may be obtained from the United States Department of State.  
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013)

#### **Rule 4.8.4**

##### **Multiple Testamentary Instruments - Proof**

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code sections 8220-8223. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument, need not be proven independently of the subsequent instrument.  
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Renum. 2014)

#### **Rule 4.8.5**

##### **Will With Deletions or Interlineations**

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

"Proof of Holographic Instrument," Judicial Council form DE-135, is required whenever the petitioner alleges that the deletion or interlineation is in the handwriting of the testator and should be admitted. (Prob. Code §§ 8221, 8222.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 2014; Rev. 1/1/2015)

#### **Rule 4.8.6**

##### **Bonding of Personal Representatives**

**A.** When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be \$20,000.

**B.** Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

**C.** Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

**D.** Non-resident personal representatives are subject to no less than the minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Renum. 2014)

#### **Rule 4.8.7**

##### **Declinations and Consents to Serve**

**A.** It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court. If the entity is no longer in business, the petitioner should file the declination of its successor entity, if any.

**B.** If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2012; Renum. 2014)

#### **Rule 4.8.8**

##### **Continuance to Permit Filing of Contest**

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.  
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014)

#### **Rule 4.8.9**

##### **Multiple Representatives**

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.  
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014)

## **CHAPTER 9 SUMMARY PROCEEDINGS**

#### **Rule 4.9.1**

##### **Petition to Set Aside Small Estate**

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing for the same date and time.  
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.9.2**

##### **Spousal Property Petition**

**A.** If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information must be included in the spousal property petition:

1. Date and place of marriage;
  2. Ownership of any real and personal property on date of marriage and a description and approximation of values;
  3. Decedent's net worth at time of marriage;
  4. Decedent's occupation at time of marriage;
  5. A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;
  6. The identification of any property described in 2 or 5 above which is still a part of this estate;
  7. A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and
  8. Any additional facts upon which the claim that property is community or quasi-community property is based.
9. Facts that rebut Evidence Code § 662.

**B.** If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2014)

#### **Rule 4.9.3**

##### **Proceedings to Establish Fact of Death**

**A.** A petition to establish the fact of death (under Prob. Code, § 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

**B.** There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

**C.** A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

**D.** A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

**E.** In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

**F.** A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in A., above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than ten days after the filing of a petition.

**G.** The court may make an order on the petition filed under F., determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar.

**H.** Petitions to establish the fact of birth or marriage under Health & Safety Code section 103450 are set in the same manner as F.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011)

## **CHAPTER 10 INDEPENDENT ADMINISTRATION**

### **Rule 4.10.1**

#### **Independent Administration**

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Prob. Code, § 10400), a Notice of Proposed Action will be required for the sale of a mobile home valued at or above \$50,000.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011)

## **CHAPTER 11 MISCELLANEOUS PETITIONS**

### **Rule 4.11.1**

#### **Petition for Instructions**

**A.** The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

**B.** Petitions for Instructions may not be used to determine the manner in which a probate estate should be distributed. A direction of the court regarding distribution of a probate estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

**C.** The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

### **Rule 4.11.2**

#### **Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)**

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least forty days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.

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

### **Rule 4.11.3**

#### **Petition to Determine Persons Entitled to Distribution (Prob. Code, §§ 11700-11705)**

**A.** Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Prob. Code, § 56.)

**B.** A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

**C.** When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.



**D.** When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

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

#### **Rule 4.11.4**

##### **Petition for Family Allowance (Prob. Code §§ 6540-6545)**

**A.** Ex parte petitions for family allowance may be made during the six-month period following the qualification of the personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed twelve months.

**B.** If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.

**C.** The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

**D.** All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for \_\_\_\_\_ months from the date of the order or until further order of the court, whichever occurs first."

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.11.5**

##### **Petition for Authority to Operate a Business (Prob. Code § 9760)**

The court may direct that at least fifteen days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.11.6**

##### **Petition for Authority to Borrow (Prob. Code §§ 9800-9807)**

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

**B.** If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

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

#### **Rule 4.11.7**

##### **Petition for Authority to Retain an Attorney**

**A.** A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

**B.** If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount including the necessity for further funds, the amount spent to date, and for what services.

**C.** The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See *Whittlesey v. Aiello* (2002) 104 Cal.App.4<sup>th</sup> 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4<sup>th</sup> 1445.

(Adopted 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

#### **Rule 4.11.8**

##### **Joinder in Pleadings**

**A.** Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined

Pleading”) by filing and serving a verified “Joinder in Pleading” prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

**B.** The filing of a Joinder in Pleading indicates the endorsing party’s adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party must give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such Joinder in Pleading may move, demur, or otherwise plead to the Joinder in Pleading in the same manner as to an original pleading.

**C.** The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading.

**D.** A filing fee equal to the fee required by the original filed petition is required.  
(Adopted 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2015)

#### **Rule 4.11.9**

##### **Community Property Transactions**

Absent good cause, the court will appoint a guardian ad litem for the incapacitated spouse in all proceedings pursuant to section 3100 et seq. The report of the attorney or guardian ad litem shall discuss the ultimate testamentary disposition of the involved assets.

(Adopted 1/1/2007; Rev. 1/1/2012; Rev. 1/1/2013)

#### **Rule 4.11.10**

##### **Petition for Transfer of Case to Another County**

**A.** There must be a signed order to transfer. If a stipulation is filed, it must be signed by all parties who have appeared on the case. The order or stipulation must include the name and address of the superior court to which the case is being transferred.

**B.** Separate fees are required to be submitted with the order or stipulation to transfer, unless fees have been waived by the court.

1. Change of Venue fee for San Diego Superior Court

2. Initial filing fee for the receiving court.

These fees are to be paid by the moving party, unless otherwise noted on the order or minutes.

**C.** Any future hearing dates will be vacated.

(Adopted 1/1/2008; Rev. 1/1/2012)

#### **Rule 4.11.11**

##### **Petition for Authority to Continue Administration**

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed twelve months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2013)

#### **Rule 4.11.12**

##### **Petition to Appoint Guardian ad Litem**

Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary. Appointment of a guardian ad litem may be requested by ex parte petition.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. & Renum. 1/1/2013)

## **CHAPTER 12 CREDITOR'S CLAIMS**

#### **Rule 4.12.1**

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

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

**B.** In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See Rule 4.15.4.)

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

#### **Rule 4.12.2**

##### **Filing Creditors' Claims**

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Prob. Code, § 9250.)

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

#### **Rule 4.12.3**

##### **Creditors' Claims of Personal Representatives or Counsel**

**A.** The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

**B.** A proposed allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.

**C.** The court on its own motion may set the creditor's claim for hearing and require fifteen days' written notice be given by the creditor to all heirs and devisees.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013)

#### **Rule 4.12.4**

##### **Payment of Claims and Debts**

**A.** Other than those creditors' claims ordered paid by the court, the personal representative may defer payment of claims until settlement of an account.

**B.** The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section.

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Renum. 1/1/2006)

#### **Rule 4.12.5**

##### **Special Creditors' Claims**

**A.** Funeral expenses must be reasonable and interest is allowed on such claims commencing sixty days after the date of death (H&S Code 7101).

**B.** Public entities' creditor's claims are governed by Probate Code section 9200 et seq., and may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

**C.** Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2015 )

## **CHAPTER 13**

### **SALES**

#### **Rule 4.13.1**

##### **Publication of Notice of Sale of Real Property**

**A.** Unless one of the exceptions mentioned in Probate Code sections 10301-10303 apply, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

**B.** The notice of sale of real property must set forth the assessor's parcel number as well as the street address or other common designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.13.2**

##### **Vesting of Title to Property**

A. The court will not confirm a sale to a "nominee" or "assignee", only to the actual buyer.

B. In a conservatorship or guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code sections 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code sections 2359 and 2403.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

#### **Rule 4.13.3**

##### **Bond on Sale of Real Property**

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

C. In a conservatorship or guardianship, a Recovery bond must be included in the total bond as required by Probate Code section 2320 and California Rules of Court, rule 7.207.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

#### **Rule 4.13.4**

##### **Exclusive Listings for the Sale of Real Property**

A. A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

B. In decedent's estates, a personal representative with limited authority under the Independent Administration of Estates Act shall not enter into an exclusive listing agreement or contract to sell real property of the estate without prior court approval.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.13.5**

##### **Commissions on Sale of Real Property**

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may not allow a commission in excess of five percent (5%) on improved property or ten percent (10%) on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has any interest in, the purchaser. (See Prob. Code, § 10160.5.)

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

#### **Rule 4.13.6**

##### **Sale of Real Property When Buyer Assumes Encumbrance: Necessity for Minimum Deposit**

**A.** A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

**B.** The court requires a ten percent (10%) deposit be made prior to confirmation on any sale of real property, such deposit to be held by the personal representative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

#### **Rule 4.13.7**

##### **Sale of Specifically Devised Property**

The sale may not be approved without the specific beneficiary's consent unless the court finds good cause for approval without the consent.

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

#### **Rule 4.13.8**

##### **Personal Property Must Be Appraised Before Sale**

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

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

#### **Rule 4.13.9**

##### **Sales of Mobile Homes**

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

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

#### **Rule 4.13.10**

##### **Sales of Securities**

**A.** Commonly traded securities need not be appraised before the sale may be authorized.

**B.** In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

**C.** In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

**D.** Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

**E.** If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

**F.** The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

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

#### **Rule 4.13.11**

##### **Overbids**

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

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

#### **Rule 4.13.12**

##### **Increased Bid Forms**

When there is a successful overbid in open court on a sale of real property, an “Increased Bid in Open Court” (SDSC PR-065) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.  
(Rev. & Renum. 7/1/2001; Rev. & Renum. 1/1/2006)

#### **Rule 4.13.13**

##### **Allowance of Commissions Upon Overbid**

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.

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

## **CHAPTER 14 INVENTORY AND APPRAISAL**

#### **Rule 4.14.1**

##### **Preparation of Inventory and Appraisal**

**A.** With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

**B.** An Inventory of real property must include the following information:

1. Complete legal description;
2. Common address;
3. Assessor's Parcel Number;
4. Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

**C.** The Inventory must not include any asset which is not an asset of the estate, such as:

1. Insurance proceeds payable to named beneficiaries.
2. Individual retirement accounts payable to named beneficiaries.
3. Trust assets which pass by trust terms, including Totten Trusts.
4. Assets held in joint tenancy, if there is a surviving joint tenant.
5. Out-of-state real property.

**D.** Petitioner shall characterize each item of property listed in the Inventory and Appraisal pursuant to Probate Code § 8850.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev. & Renum. 1/1/2012)

#### **Rule 4.14.2**

##### **Correcting Inventory and Appraisal**

**A.** If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

**B.** If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

**C.** If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

**D.** If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

**E.** Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>APPRAISED VALUE</b>
4	Item 4 was previously described as:	400 shares XYZ common stock

Item 4 is correctly described as:	300 shares XYZ common stock
Previously appraised value:	\$4,000.00
Correct appraised value:	\$3,000.00
Change in appraised value:	(\$1,000.00)

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

#### **Rule 4.14.3**

##### **Petition for Waiver of Appraisal by Referee**

When no referee has been designated for the case, fifteen days' notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.

(Adopted 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

## **CHAPTER 15 ACCOUNTS AND REPORTS**

#### **Rule 4.15.1**

##### **Required Form of Accounts**

**A.** Accounting values of assets must not be changed to reflect fair market value, but fair market value must be set forth separately in the report or account.

**B.** Schedules for receipts and disbursements to be set forth in subject-matter categories for: Trusts, Conservatorships, and Guardianships

**C.** Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. & Renum. 1/1/2015)

#### **Rule 4.15.2**

##### **Bank Letters and Statements**

**A.** All interim accounts must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

**B.** If bank statements and/or residential care facility statements are only received electronically, report should so allege and copies should be provided.

**C.** The appropriate balance must be clearly highlighted or otherwise marked. (Renum 1/1/2015)

**D.** Balances shown in the accounting, if different, must be reconciled to the letters or statements. (Renum 1/1/2015)

**E.** Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements." Bank or financial statements substantiating accountings must be lodged with the court until the date of the hearing at which the account is approved. The court may return the statements to the tendering party to hold until the account becomes final. These statements must be marked "Confidential Bank and/or Financial Statements for Accounting Purposes" and follow local rule 4.3.2 for lodging documents. (Renum 1/1/2015)

**F.** For purposes of this section, "institutions" is defined in Probate Code section 2890, subdivision (c). (Renum 1/1/2015)

**G.** For purposes of this section, "financial institutions" is defined in Probate Code section 2892, subdivision (b). (Renum 1/1/2015)

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2015)

### **Rule 4.15.3**

#### **Allegations Re: Claims**

The report accompanying any accounting or waiver of accounting must include the following information:

**A.** Whether any Notice of Administration was given to creditors within the last thirty days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Prob. Code, § 9051.)

**B.** If all Notices of Administration were given prior to the last thirty days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient. (Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

### **Rule 4.15.4**

#### **Reporting Payment of Debts**

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

**A.** Identification of the creditor, the amount and the date paid;

**B.** The debt was justly due from the decedent's estate;

**C.** The debt was timely paid in good faith;

**D.** The amount paid was the true amount owed by the decedent and was reasonable; and

**E.** The estate is solvent.

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

### **Rule 4.15.5**

#### **Allegation Re: Character of Property**

**A.** A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

**B.** An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

**C.** Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

**D.** The court will authorize filing of a late election only upon showing of good cause.

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

### **Rule 4.15.6**

#### **Vouchers**

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed.

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

### **Rule 4.15.7**

#### **Damages for Wrongful Death and for Physical Injury of Decedent**

**A.** Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

**B.** The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

**C.** Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

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



#### **Rule 4.15.8**

##### **Supplemental Accountings with Final Discharge**

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when \$2,500 or more is withheld at the time of the final accountings. The court will set a review hearing for amounts withheld in excess of \$10,000. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The starting balance of the supplemental accounting must be for the amount withheld only, and receipts and disbursements shall be reported, starting with the date after the ending date of the final account.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2000; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2013; Renum. 2014)

#### **Rule 4.15.9**

##### **Accounts and Reports of Conservators and Guardians of Estate**

**A.** All accounts must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575, unless ordered by the court. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

**B.** Reports must contain the current address and whereabouts of the conservatee or minor, and describe the conservatee's or minor's status and condition. Guardian's Report must set forth guardian's address and minor's age.

**C.** Reports must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, plus the recovery bond as set forth in California Rules of Court, rule 7.207.

**D.** The report must also show any blocked bank accounts.

**E.** Counsel shall submit an additional copy of any current account for the court investigator with a completed and updated Referral Information and List of Relatives form [SDSC PR-020] attached to the front of the accounting.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Renum. 2014; Rev. 1/1/2015)

#### **Rule 4.15.10**

##### **Required Form of Conservator and Guardian Accounts**

**A.** The first accounting must be for a period not to exceed one year from the date of appointment.

**B.** A final account must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution, consistent with the relevant portions of rule 4.7.2(G).

**C.** The final account must allege whether or not all income and other taxes which became due and payable during the conservatorship or guardianship have been paid.

**D.** In the final conservatorship account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any, were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

**E.** In all cases, notice must be given to all persons entitled to receive property.

**F.** All conservatorship accounts must disclose the existence of a trust where the conservatee is a vested beneficiary, the current fair market value of the conservatee's interest, whether the conservator is a trustee, whether counsel for the petitioner is also attorney for the trust and/or trustee, and whether fees approved in the account are to be paid from the trust.

**G.** Where a guardian accounts for assets of more than one minor, the accounting for each minor must be set forth separately within one report.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. & Renum. 1/1/2013; Renum. 2014)

#### **Rule 4.15.11**

##### **Waiver of Account Involving Public Benefit Payments**

The court may enter an order that the Conservator need not present an account pursuant to Probate Code section 2628. The order may be obtained, in advance of, or subsequent to, the account due date, by filing and serving a petition requesting an order waiving account. The petition must contain allegations for the current account period as required by Probate Code section 2628, subdivision (b). If authority is granted to waive future accounts, the conservator must annually file, prior to the review hearing required by Local Rule 4.18.17, a verified declaration

stating that the conditions specified in Probate Code section 2628, subdivision (b), have been met for the applicable accounting period. If the conditions have not been met for any subsequent accounting period, an account must be filed for that account period as required by Probate Code section 2620.  
(Adopted 1/1/2008; Renum. 1/1/2013; Rev. & Renum. 2014)

#### **Rule 4.15.12**

##### **Report of Guardian of Person**

Every guardian of the person of a minor must file a Confidential Guardianship Status Report (Judicial Council Form GC-251). The first report is due not later than one year after the initial appointment. Thereafter, reports will be due annually. Failure to file the report and appear in court when required to do so may constitute “good cause” for the court to remove the guardian from his or her office.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Renum. 1/1/2013; Renum. 2014)

#### **Rule 4.15.13**

##### **Report of Court Appointed Attorney**

Counsel appointed by the court must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

**A.** Discuss the pending issues, to the extent such discussion would not constitute a disclosure that would be restricted by or prohibited by Evidence Code sections 950 et seq.

**B.** Document the services performed, specifying the dates the services were performed, and setting forth the categories of services rendered including the amount of hours expended and the hourly rate requested for each category.

**C.** Include a fee request in the prayer.

**D.** Include a recommendation regarding the ability or inability of the parents to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by the parent(s) or by the County of San Diego.

**E.** Make a recommendation whether or not counsel may be discharged.

**F.** State that counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. & Renum. 1/1/2014)

## **CHAPTER 16 FEES, COMMISSIONS AND COST REIMBURSEMENT**

#### **Rule 4.16.1**

##### **Probate Estate Administration**

**A.** Ordinary office expenses and travel expenses incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

**1.** An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

**2.** For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expenses, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fee and work required in the administration of the estate.

**B.** Travel and office expenses appearing in any account must be explained in the report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

#### **Rule 4.16.2**

##### **Fees and Commissions in Trusts, Conservatorships, and Guardianships**

**A.** The court will not grant a fee request without an accounting, absent good cause.

**B.** Fees for court appointed counsel should be requested in the hearing as part of counsel’s report and comply with the requirements of Local Rule 4.15.13.

**C.** Any Requests for Court Approval and/or confirmation of compensation must be set forth in a declaration that is separate from the Petition or Account.

**1.** Conservators seeking compensation must submit the following:

- a. A completed “Fee Request Declaration” (form SDSCPR-96) for all requests for compensation in excess of \$750.00.
  - b. Must state whether or not funds from any outside sources have been received by the Conservator, which cover in whole or in part, the costs of administration of the conservatorship.
2. Institutional fiduciaries seeking approval of fees premised upon fee schedules must submit a declaration that sets forth the published fee schedule for the period involved; the compensation paid to the fiduciary during the period; and the dates of such payment(s).
3. In guardianships and conservatorships in which the Public Guardian or County Counsel seek compensation, a declaration must be filed that sets forth information regarding the factors listed in Probate Code Section 2942 together with the information required in Rule 4.16.2(C)(4) of these rules, except that the hours expended and an hourly rate of service need not be set forth.
4. In all other fee requests, the declaration must:
- a. Specify the specific dates during which the services were performed;
  - b. Set forth categories of services rendered, together with the amount of hours expended for each such category and the hourly rate sought for each such category;
  - c. Each category to set forth the total number of hours performed by each person who performed the services and the hours spent by each of them;
  - d. Set forth the total cumulative amount of hours for each of the following: the attorney, paralegal, law clerk, legal assistant or any other person who performed the services set forth in the declaration;
  - e. Use of paralegals must include the requirements listed in Rule 7.703(e) of the California Rules of Court
  - f. Set forth information that will assist the court in determining whether the hours incurred and the rate sought are just and reasonable, including a discussion of the nature and difficulty of the tasks performed; the results achieved; the benefit to the trust, ward or conservatee; the background, skill and experience of the person rendering the service; an explanation of why the work required more than ordinary skill or judgment; and the standard rate in the community for such tasks.
5. If a trustee wishes the court to consider the factors set forth in California Rule of Court 7.776 in assessing the fee request, his or her declaration should include allegations regarding such factors.
6. If a conservator or guardian wishes the court to consider the factors set forth in California Rule of Court 7.756 in assessing the fee request, his or her declaration should include allegations regarding such factors.
7. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Fiduciaries and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving the account.
8. Fees may be sought for work related to the report and accounting for the current period.
9. In trust accountings, an allegation must be made as to the total amount of attorneys’ fees and trustee’s fees paid during the applicable accounting period.

**D.** A fee declaration is not required if court approval of attorney or fiduciary fees is not required by statute and such approval is not otherwise sought in the pleadings; unless the court orders that a fee declaration be prepared and filed.

(Adopted 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

### **Rule 4.16.3**

#### **Periodic Payments to Trustees**

On petition, the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. If the court authorizes such payments, the trustee may receive such payments only if the services described in the petition are actually rendered. The payments are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.

(Adopted 1/1/2011)

### **Rule 4.16.4**

### **Payments From Other Sources**

Any request for a court order approving fees, costs, and compensation to be paid from a source other than the estate must set forth an allegation of the total amount to be paid and disclose the source of the payment. If funds are to be paid from a court-supervised source in probate, the case number shall be set forth.  
(Adopted 1/1/2015)

## **CHAPTER 17 DISTRIBUTION**

### **Rule 4.17.1**

#### **Distribution to Minor**

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

**A.** A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor **or** to the conservator of a disabled adult.

**B.** The written assurance of a parent that the minor's estate, including the bequest, does not exceed \$5,000 when distribution is made pursuant to Probate Code section 3401.

**C.** The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011)

### **Rule 4.17.2**

#### **Distribution Under Probate Code Section 13101 Affidavit**

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.

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

### **Rule 4.17.3**

#### **Blocked Accounts**

In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.

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

### **Rule 4.17.4**

#### **Distribution to Deceased Beneficiary**

**A.** When an heir or beneficiary dies during administration of an estate, the Petition for Distribution must request distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

**B.** The Petition for Distribution shall include a copy of letters for personal representative of deceased beneficiary/heir's estate and case number.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2015)

### **Rule 4.17.5**

#### **Assignment of Interest in Estate**

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding. The court will require additional information, including consideration paid, to assure that the assignor fully comprehends the effect of the assignment, that it was voluntarily made and was not grossly unreasonable. The terms of said assignment will be set forth in the Order for Distribution as set forth in Rule 4.7.2, *infra*.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

### **Rule 4.17.6**

#### **Preliminary Distribution Bond**

**A.** If a preliminary distribution is made before the time for filing creditors' claims has expired, a bond must be furnished by the distributees.

**B.** When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

**C.** An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

#### **Rule 4.17.7**

##### **Receipts on Preliminary Distribution**

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8 of these rules.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

#### **Rule 4.17.8**

##### **Receipts on Final Distribution**

**A.** Receipts for property received on final distribution must be signed by the (1) distributee, unless there is a showing of good cause why the distributee cannot or will not sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

**B.** A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

#### **Rule 4.17.9**

##### **Property to be Distributed Must Be Listed**

**A.** The petition for distribution must list and describe in detail all property to be distributed, including cash. The proposed distribution of cash must specify the exact dollar amount to be distributed to each recipient. Proposed distribution of non-cash assets must specify the percentage to be distributed to each recipient..

**B.** The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

**C.** Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

**D.** The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

**E.** Description by reference to the inventory is not acceptable.

**F.** The value of each individual asset on hand and the total value of the assets must be set forth.

(Adopted 1/1/1990; Renum.7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2013)

#### **Rule 4.17.10**

##### **Requests to Withhold Funds from Final Distribution**

In every case where the Petitioner requests to withhold \$10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.

(Adopted 1/1/2006; Rev. 1/1/2009)

## **CHAPTER 18 CONSERVATORSHIPS**

#### **Rule 4.18.1**

### **Conservatorship Orientation Program**

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2340, must complete an education class if ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions. (Adopted 1/1/2006; Rev. 1/1/2011)

### **Rule 4.18.2**

#### **Temporary Conservatorships**

**A.** The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made as follows:

**1.** Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge;

**2.** The proposed conservatee is present or if the proposed conservatee is unable to attend;

**a.** the proposed conservatee is hospitalized, has notice of the ex parte hearing and its purpose, and cannot attend for medical reasons that must be supported by a physician's declaration;

**b.** evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; or,

**c.** in appropriate circumstances where capacity is not an issue, the proposed conservatee has consented and waived notice.

**3.** There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment. This requirement may be waived by the court upon a showing of good cause.

**4.** Petitioner must state in the Ex Parte Application whether there are known objectors.

**a.** If there are known objections, absent good cause, the matter will be set for a noticed hearing; or

**b.** If the petitioner desires to proceed without notice to a known objector, the petitioner must demonstrate by competent evidence the need to waive notice based on good cause.

**5.** Unless good cause is shown, the reports of a court appointed attorney and court investigator are on file.

**6.** Absent good cause, 24-hour notice has been given to the proposed conservatee's spouse or domestic partner, and all relatives within the second degree.

**7.** In matters where the application is made primarily to make health care decisions a declaration is on file by petitioner and court appointed counsel setting forth reasons why temporary conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.

**B.** Upon request, a petition for temporary conservatorship may be "short set" by the probate business office on the next available moving calendar. The petition will be set at a shortened date and time to allow five days' notice to parties entitled.

**C.** No initial appointment of a temporary conservator may exceed a period of thirty days, but such appointment may be extended by the court to the date of the hearing on the permanent conservatorship. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the initial appointment and there are no objections.

**D.** Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.

**E.** Good cause is defined as those circumstances where it is essential to protect the proposed conservatee, or the proposed conservatee's estate, from immediate and substantial harm.

**F.** Whenever an ex parte temporary conservatorship is sought and a waiver of notice is requested, or presence of the proposed temporary conservatee is not excused by statute, it must be accompanied by a proposed order which includes factual findings reflecting the substantial harm posed to the proposed conservatee, or the proposed conservatee's estate.

**G.** The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.

**H.** A petition for appointment of a temporary Conservatorship of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

**I.** All petitions for temporary conservatorships, including “short set” temporary conservatorships must be submitted with an extra copy of the petition and all related documents for the Court Investigator.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2014)

#### **Rule 4.18.3**

##### **Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information**

**A.** All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act (“LPS”) and, if so, the number of the Mental Health action, the name of the conservator, when the conservatorship expires, and that court’s findings regarding the proposed conservatee’s ability to complete the affidavit of voter registration.

**B.** If an LPS conservatorship exists, notice must be given to: (1) The LPS conservator; (2) counsel representing the LPS conservatee; and (3) all persons otherwise required by Probate Code section 1460 et seq.

**C.** When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion, if any, is to be included in the conservatorship. (Prob. Code, § 3051.)

**D.** Spouses, registered domestic partners, children, grandchildren, parents, grandparents and siblings are relatives within the second degree. The petition must allege all relatives within the second degree and must list their names, current addresses and telephone numbers, relationship to the proposed conservatee, and whether they are minors or adults (e.g., “John Smith, adult grandchild,” or “John Smith, grandchild age 13”).

**E.** Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050, Investigator Referral and, the Duties and Liabilities form. The petition will be rejected for filing if required forms are not submitted with the petition. For non-imaged cases, a copy of such forms must also be filed for the Court Investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

**F.** Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional fiduciary (PPF), their current licensing status, the expiration date of their current registration, their state license number. If the proposed conservator is not PPF and is not related to the proposed conservatee, the proposed conservator must allege facts in a declaration under penalty of perjury to aid the court in determining whether he or she is a “professional fiduciary,” as defined in Business and Professions Code § 6501 (f).

**G.** The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

**H.** When the proposed conservatee is, or was, the subject of a guardianship, the “Petition for Appointment of a Conservator” must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

**I.** When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence, name of the trust, location of the trust, the date the trust was established, whether the trust is under court supervision, the existing case number, as well as the petitioner or proposed conservatee’s status and interest therein must be disclosed in the petition. Additionally, the Petition for Conservatorship must state whether the petitioner, or the proposed conservator, also serves as attorney in fact under a Power of Attorney in which the conservatee is the principle.

**J.** The Petition for Conservatorship must state, with specificity, evidence to support a finding that petitioner has standing pursuant to Probate Code section 1820. The court generally considers an “interested person” and/or “friend” to include the proposed conservatee’s physician, accountant, stockbroker, neighbor, or other such acquaintance. (Prob. Code, § 1820, subd. (a)(5).) Where petitioner’s relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given to the Public Guardian.

**K.** Whenever the petitioner is not a family member a separate verified declaration containing the following information must be submitted:

1. The due diligence efforts of the petitioner to locate family members, friends and neighbors, and to ascertain the proposed conservatee's preferences in appointing a conservator, or explain why it was not feasible to do so.

2. The efforts of the petitioner to discuss with family members and friends the proposed conservatee's preferences in appointing a conservator.

3. A description of the petitioner's prior relationship, and contacts with, the proposed conservatee. If the petitioner was not nominated by a relative, or the proposed conservatee, the petitioner must set forth the specific circumstances under which he or she became involved with the proposed conservatee.

**L.** When filing a petition for the appointment of a conservator or successor-conservator, the petitioner must file an extra copy of the petition and all subsequent documents regarding the petition for use by the Court Investigator, including copies of Trusts and Powers of Attorney if those documents are ordered to be filed.

(Adopted 1/1/1990; Rev. 1/1/1991; 7/1/1996, Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

#### **Rule 4.18.4**

##### **Capacity to Give Informed Consent for Medical Treatment**

**A.** Any petition seeking a determination that the proposed Conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to Conservatee's lack of capacity to consent to medical treatment.

**B.** Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

**C.** If any conservatorship petition, including a temporary conservatorship is premised on the need to exercise medical authority, the petitioner must explain why a Probate Code Section 3200 Petition is not the least restrictive alternative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Renum. 1/1/2014; Rev. 1/1/2015)

#### **Rule 4.18.5**

##### **Dementia Authority**

**A.** A request for dementia authority per Probate Code section 2356.5 may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

**B.** A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM V).

**C.** A Capacity Declaration – Conservatorship (GC-335) and Dementia Attachment (GC-335A) must be filed in support, and must address each required finding per Probate Code section 2356.5, subdivision (f)(3).

**D.** A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

**E.** A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

**F.** Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (See also Rule 4.18.10.)

**G.** A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

**H.** A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

**I.** Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

**J.** The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.



**K.** The court will require fifteen days' notice, with a copy of the petition, to the conservatee, conservatee's spouse, registered domestic partner, and relatives within the second degree. (Adopted 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. & Renum. 1/1/2014)

#### **Rule 4.18.6**

##### **Independent Powers: Sale of Residence**

**A.** The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

**B.** Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

**C.** The independent powers granted must be set forth in the order and in the letters of conservatorship.

**D.** If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

**E.** The court will consider the petition for authority to sell a residence on an ex parte basis, upon showing of immediate need, if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Renum. 1/1/2014)

#### **Rule 4.18.7**

##### **Consent of Conservator to Act**

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

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

#### **Rule 4.18.8**

##### **Court Investigation/Response to Court Investigator's Report**

**A.** Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e. as provided in California Probate Code sections 1826, 1848 or other appropriate section), a Referral Information and List of Relatives (Confidential) [form SDSC PR-020] must be filed with the Petition for Appointment of Probate Conservator. An updated Referral Information and List of Relatives must be filed with each accounting or subsequent hearing following the establishment of a conservatorship if any contact information has changed.

**B.** No Order Appointing Court Investigator is required because the court has made a general order appointing the court investigators for all cases.

**C.** If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented and the referral must be filed. Counsel must call the Court Investigator to alert him or her of the need for an investigation. If this is not accomplished at least ten days before the hearing date, a continuance ordinarily will be required.

**D.** Petitioner must cooperate with the Court Investigator in the preparation of a Court Investigator's Report and must use all reasonable efforts to timely provide appropriate information as requested by the Court Investigator, to include the proposed conservatee is made available to be interviewed by the Court Investigator.

**E.** When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel and/or the conservator subsequent to the establishment of the conservatorship, the conservator must promptly file a report responsive to the concerns addressed by the investigator or court appointed attorney.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2012; Rev. 1/1/2013; Renum. 1/1/2014; Rev. 1/1/2015)

#### **Rule 4.18.9**

##### **Limited Conservatorships**

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.  
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2014)

#### **Rule 4.18.10**

##### **Appointment of Counsel for Conservatee or Patient**

The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Renum. 1/1/2014)

#### **Rule 4.18.11**

##### **Successor Conservator**

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report; before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least fifteen days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

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

#### **Rule 4.18.12**

##### **Conservatorship Assessments**

An assessment will be made against the estate of each conservatee for the cost of any investigation made by the court investigator under appropriate statutes. The assessment for investigations by the court investigator is set by the court. Absent proof of Medi-Cal benefits or unless the court orders otherwise, the assessment is due and must be paid immediately upon receipt of the investigator's report. The court will routinely check for the payment of assessments when any petition in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown. If it is proven the conservatee receives Medi-Cal benefits and also has a Trust, an assessment will be made against the conservatee's Trust for the cost of any investigation made by the court investigator.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

#### **Rule 4.18.13**

##### **Investments by Conservator**

**A.** In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

**B.** The court will not approve the following:

1. Unsecured loans.

2. Loans to relatives.

3. Bonds or obligations of foreign governments or corporations.

**C.** The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

**D.** A conservator may continue managing investments specified in Probate Code section 2459, subdivision (b), which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)

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

#### **Rule 4.18.14**

##### **Substituted Judgments in Conservatorships Probate Code section 2580**

**A.** Absent good cause, the court will appoint an attorney or a guardian ad litem for the Conservatee in all proceedings pursuant to Probate Code section 2580 et seq.

**B.** Where the petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the trust must provide, unless otherwise ordered, that the trust is subject to continuing court supervision under the Probate Code. Absent an order of the court to the contrary, all trust assets must remain within the State of California. In the case of securities, cash and other items of intangible personal property, the assets must remain on deposit with an entity registered with the California Secretary of State to do business in California.

**C.** A request for approval under PRC 2580, for a substituted judgment, must be filed in a separate petition and cannot be combined in the initial petition for an appointment of a conservator.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

#### **Rule 4.18.15**

##### **Fees for Conservators and Counsel**

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.18.16**

##### **EADACPA Proceedings**

When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.9.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2014)

#### **Rule 4.18.17**

##### **Court Ordered Review Hearings**

**A.** At the hearing approving a Petition for Conservatorship of the Person or Estate, the court will set compliance dates follows:

**1.** Within ninety days, the conservator of the Person is to provide proof of the filing with the court of a Level of Care Evaluation (Prob. Code, § 2352.5) and the Notice of Rights of Conservatee (Prob. Code, § 1830). The conservator of the Estate is to file an inventory and appraisal (Prob. Code, § 2610) at or before the ninety-day compliance date.

**2.** Within four hundred and twenty-five days of appointment, the Conservator of the Estate is to file the first account required under Probate Code 2620.

**3.** Within seven hundred and ninety days of filing the previous accounting, the Conservator of the Estate is to file subsequent account required under Probate Code 2620, unless otherwise directed by the court.

**4.** If any of the above required materials are not filed prior to the compliance date, the court will set the matter for review hearing. If the materials are filed three days prior to the review hearing, the review hearing will be taken off-calendar. Counsel who file the materials less than three days prior to the hearing must attend and bring evidence of compliance to the review hearing.

**B.** If materials required by Paragraph A above have not been filed by the date of the review hearing, the conservator and counsel, if any, must appear at the review hearing and must show cause why the conservator should not be suspended, removed, or otherwise sanctioned pursuant to Code of Civil Procedure section 177.5 or 575.5 and/or why counsel should not be appointed to represent the conservatee. The court, in its discretion, may make additional orders as appropriate.

(Adopted 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2014)

#### **Rule 4.18.18**

##### **Death of Conservatee**

No later than forty-five days after the death of a conservatee, the conservator shall file a notice of death of conservatee, setting forth the date of death, and shall cause such notice to be served on all interested parties, including, if applicable, the court appointed attorney, and all known heirs at law, and all successors in interest, including other fiduciaries for the conservatee.

(Adopted 1/1/2015.)

## **CHAPTER 19 GUARDIANSHIPS**

#### **Rule 4.19.1**

##### **Temporary Guardianships**

**A.** A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

**B.** The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

**C.** The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made by separate declaration and order as set forth at California Rules of Court, rule 7.1012. Upon granting of an ex parte temporary guardianship a reconsideration hearing will be set if the petition for general guardianship is more than thirty days from date of temporary appointment order.

**D.** Upon request, a petition for temporary guardianship may be “short set” by the probate business office on the next available moving calendar. The petition will be set at a shortened date and time to allow five days’ notice to parties entitled.

**E.** The filing fee required for petitions for temporary guardianship is due at filing in addition to the ex parte filing fee, if any.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2015)

#### **Rule 4.19.2**

##### **Petition for Appointment of Guardian: Jurisdiction**

**A.** If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

**B.** When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

**C.** Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

**D.** It is the petitioner’s responsibility to ensure that allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, not appear in the petition. Allegations of this nature must be submitted on a separate document which will be maintained in a confidential envelope. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011)

#### **Rule 4.19.3**

##### **Co-Habitant of Proposed Guardian**

**A.** If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said co-habiting adult. The co-habiting adult is subject to a background screening by the investigating agency.

**B.** Written consent of the co-habiting adult must be filed with the court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011)

#### **Rule 4.19.4**

##### **Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents**

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

#### **Rule 4.19.5**

##### **Investigation**

Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations will be done by Family Court Services, the Court Investigator (Probate Department) or Department of Social Services as follows:

<b>Guardianship Of</b>	<b>Proposed Guardian</b>	<b>Agency</b>
1. Person or Person/Estate	Relative	Family Court Services
2. Person or Person/Estate	Non-relative	HHSA
3. Estate only	Relative or Non-relative	Court Investigator
4. Estate Only-Waiver	Relative or Non-relative	No Investigation

For these purposes, relative is defined in Probate Code Section 1513(g).

**PARTY IS TO SUBMIT DOCUMENTS AND FOLLOW PROCEDURES BELOW FOR CORRESPONDING NUMBERS ABOVE:**

**1. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE**

a. Submit Order Directing or Waiving Investigation, PR-63. Fill out order, check #1.

b. Go to Family Court Services immediately to make an appointment. The investigation process will ordinarily take at minimum six weeks. TAKE COPIES OF ALL GUARDIANSHIP DOCUMENTS WITH YOU including a completed Guardianship Questionnaire (form SDCS FCS-045). Locations and phone numbers can be found at <http://www.sdcourt.ca.gov>. The investigation fee must be paid prior to the investigation.

**2. NON-RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE**

a. Per Probate Code 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Party to submit the Order Directing or Waiving Investigation PR-63 to the Probate department. Fill out order, check #2.

c. Send a second copy of the petition to: Health and Human Services Agency, Children's Services, Guardianship Clerk, 6950 Levant Street, San Diego, CA 92111.

**3. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY (NON-WAIVER)**

a. Submit Order Directing or Waiving Investigation PR-63 to the probate department. Fill out order, check #3.

b. Send copy of order to Court Investigator to initiate investigation.

c. Pay the investigation fee to the probate department and send receipt with a copy of the petition and Order Directing Investigation to the Probate Department, attention Court Investigator.

**4. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE - WAIVER REQUESTED**

a. Submit a Probate Ex Parte Coversheet and Instructions PR-136, Ex parte Petition for Waiver of Investigation (on pleading paper-no form), Guardianship Questionnaire (FCS-039), and Order Directing or Waiving Investigation (PR-63) to the Probate Department. Fill out order but do NOT check a box.

b. If waiver is denied, the party will receive a copy of the Order Directing or Waiving Investigation (PR-63). The party will pay the investigation fee to the probate department and send of copy of the Order to the probate department, attention: Court Investigator.

All non-relative guardianship petitions of the person require you to send notice to the local agency investigating guardianships (per Probate Code 1516). The actual screening for neglect or abuse will be done by either San Diego Department of Social Services or Family Court Services, depending upon which agency is responsible for the investigation of the guardianship of the person. Since Family Court Services conducts screenings for prior referrals of neglect or abuse of minors in relative guardianship petitions, notice pursuant to Probate Code 1516(a) for relative guardianships is not required.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev & Renum. 1/1/2012; Rev. 1/1/2013)

**Rule 4.19.6**

**Additional Powers**

**A.** The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

**B.** A petition to fix the residence of the minor in another state, once approved by the court, will be continued for a sixty day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.19.7**

##### **Investments by Guardian**

**A.** See Rule 4.18.13.

**B.** The guardian should also consider the circumstances of the estate, indicated cash needs, the age of the minor and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.19.8**

##### **Request for Use of Minor's Assets**

**A.** If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422. The father and mother of a minor child have an equal responsibility to support the minor.

**B.** A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

**C.** The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

**D.** The request must be for a specific and limited purpose and for a limited period of time.

**E.** The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.19.9**

##### **Fees and Commissions in Guardianships**

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.19.10**

##### **Petitions for Visitation or to Modify Visitation**

If a party other than the parent requests visitation or modification of existing visitation orders, notice to the parent(s) is required.

(Adopted 1/1/2015.)

## **CHAPTER 20 TRUSTS**

#### **Rule 4.20.1**

##### **Testamentary Trust Accounts**

**A.** Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

**B.** Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renum. 1/1/2006; Rev. & Renum. 1/1/2007; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.20.2**

##### **Petition to Determine Title in Trust Matters** (Probate Code section 850-Heggstad)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations are required to be set forth in the petition:

- A.** The vesting of each asset at all relevant times;
- B.** Evidence that each asset was placed in trust;
- C.** Evidence of every transaction affecting title to each asset in question during the relevant time;
- D.** Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction;
- E.** The value of each asset to be transferred.

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

#### **Rule 4.20.3**

##### **Identification of Persons Entitled to Notice**

In addition to the requirements of Probate Code section 17201 and California Rules of Court, Rule 7.902, to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee or petitioner will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.20.4**

##### **Trusts Established Before Decree of Distribution**

**A.** Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

**B.** A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and Local Rule 4.20.4.

**C.** Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and Local Rule 4.20.4.

**D.** The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

**E.** Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

**F.** If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to be distributed, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2012; Renum. 1/1/2014)

#### **Rule 4.20.5**

##### **Special Needs Trusts**

**A.** With respect to Special Needs Trusts and Discretionary Trusts presented for establishment pursuant to Local Civil Rule 2.4.6 (c) or otherwise, the following must be included in the proposed trust:

- 1.** Provisions for appointment of successor trustee on approval of the Probate Court.
- 2.** A payback provision must be inserted as required by title 42 of the United States Code section 1396p(d)(4)(A).
- 3.** Notice requirements on termination or death of beneficiary, and for any additions to the trust.

4. Dispositive provisions (i.e. disposition to heirs at law after payback) required by title 42 of the United States Code section 1396p(d)(4)(A).

**B.** Any trust presented for establishment by the court, including trusts established under Probate Code sections 3600, 2580 and 3100, must include the requirements listed in Rule 7.903 of the California Rules of Court and as set forth in subsection A (1-4) above.

**C.** Third Party Special Needs Trusts need not be presented for court approval or include the requirements listed in listed in Rule 7.903 of the California Rules of Court and as set forth in subsection A (1-4) above.

(Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Renum. 1/1/2014)

#### **Rule 4.20.6**

##### **Fees and Commissions in Trusts**

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

#### **Rule 4.20.7**

##### **Petitions for Modifications or Termination of Trusts**

**A.** Petitions seeking the amendment of a trust must set forth the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

**B.** Petitions seeking authority to terminate a trust pursuant to Probate Code section 15403 must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary's interest as provided in Probate Code section 15300 et seq.

**C.** Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee's bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).

(Adopted 1/1/2008; Rev. & Renum. 1/1/2014)

#### **Rule 4.20.8**

##### **Petitions for Appointment of a Successor Trustee**

**A.** Petitions requesting appointment of a successor trustee must include related documents, such as declination to act, resignation, nomination, or consent; said documents must be filed, not lodged.

(Adopted 1/1/2014)

## **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 also 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 the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

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

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

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

##### **Settlements Involving Charities**

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

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

#### **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 item 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 item C.

**C.** Petitions may be dismissed only upon an order of the court. Such order shall 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, 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.)

#### **Rule 4.21.5**

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

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

**A. Conservators.** A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent's Estate] must disclose all present and past relationships.

##### **B. Attorneys.**

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

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

**3.** In complying with this rule an attorney shall not be required to violate an existing 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 guardian ad litem** 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 ten days after the proposed appointment pending communication with the court by contacting the court investigator support clerk in the business office that a conflict exists at which time new counsel will be appointed.

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

#### **Rule 4.21.6**

##### **Court Appointment:**

**A. 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 Coversheet (PR-150).

**B. Court Appointed Attorneys** are appointed on a rotational basis.

**C. Court appointments** have a ten-day provisional clause to allow the attorney to research for conflicts of interest. If there is a conflict of interest, counsel is to notify the probate business office.

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

#### **Rule 4.21.7**

##### **Elisors**

**A.** When a party 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).

**B.** When applying for an appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" but must not name a specific court employee. The application and proposed order must also indicate for whom the elisor is being appointed. The declaration supporting the application must include specific facts establishing the necessity for the appointment of the elisor.

**C.** If the court grants the order, the party must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents that require notarization, the party must arrange for a notary to be present when the elisor signs the document(s).

(Adopted 1/1/2015)

## **CHAPTER 22 CONTESTED MATTERS**

#### **Rule 4.22.1**

##### **Introduction**

When objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court, the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012)

#### **Rule 4.22.2**

##### **Filing of Petitions and Contests and Setting Contested Matters for Hearing**

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be set as follows:

**A. By Statute or Rule of Court.**

**B. Notice Not Prescribed.** If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be thirty days. The provisions of CCP § 1013 apply.

**C. Will Contests.** A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than thirty days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must appear ex parte at least two court days prior to the hearing to request additional time for service. If a continuance is granted ex parte and service is not thereafter completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions. When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.

(Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

#### **Rule 4.22.3**

##### **Service of Notice**

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, the contestant must appear ex parte at least two court days prior to the hearing and set forth the cause for the lack of service.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006; Rev. 1/1/2015)

#### **Rule 4.22.4**

##### **Filing of Objections**

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing, filed and served either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three full court days before the next scheduled hearing date on the petition or pleading, e.g., for a court hearing on Wednesday, the objections must be filed by 4:30 p.m. the preceding Thursday. If written objections have not been filed in accordance with this rule, the court may decide the matter pursuant to California Rules of Court, Rule 7.801 as if no objection had been made. In any event, written objections may not thereafter be made without leave of court by the party orally objecting.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

#### **Rule 4.22.5**

##### **Determination of Contested Matters**

**A. General.** Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court may determine the type of hearing required, the length of the hearing and the manner of disposition.

**B. Submission Without Evidentiary Hearing.** If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

**C. Short Cause Matter Hearing.** If the court determines that the matter will require an evidentiary hearing of three hours or less (a “hearing”), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a “short cause” matter. Trial briefs must be filed in the trial department and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for the short cause hearing unless the court orders otherwise.

Due to the “Short cause” nature of this hearing, the court will not entertain, receive or read responses to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 and 4.22.9 do not apply to short cause hearings.

**D. Trial.** If the court determines that the matter will require an evidentiary hearing of more than three hours (a “trial”), the court may set the matter for a Case Management Conference (see Rule 4.22.7 below).

**E. EADACPA Complaints.** When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

**F. Other Procedural Orders.** If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

#### **Rule 4.22.6**

##### **Meet and Confer, Joint Case Management Report**

If a contested matter is set for a Case Management Conference, counsel must, unless excused by the court:

**A.** Meet and confer no later than twenty days before the Case Management Conference.

**B.** File with the court a "Case Management Statement" (PR-157).

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

#### **Rule 4.22.7**

##### **Case Management Conference**

At the Case Management Conference, the court may take any one or more of the following actions:

**A.** Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

**B.** Set the following dates based upon review of the “Case Management Statement” (PR-157) and the representations of counsel:

1. Trial date;
2. Trial readiness conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested (see Rule 4.22.10).

**C.** Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

**D.** Dispense with any of the procedures provided for herein for good cause, which includes agreement of the parties.

**E.** Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013; Rev. 1/1/2015)

#### **Rule 4.22.8**

##### **Trial Readiness Conference Report/Advance Trial Review Order**

**A.** Unless dispensed with by the court at the Case Management Conference, no later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Trial Readiness Conference Report/Advance Trial Review Order. The Trial Readiness Conference Report/Advance Trial Review Order shall be in the format set forth on CIV-252 which can be viewed under the Civil Forms Section of the San Diego Superior Court’s website, <http://www.sdcourt.ca.gov>.

**B.** Matters deemed too lengthy to be heard by one of the Probate Departments shall be sent to the master civil assignments department or to one of the civil departments as appropriate. Counsel shall file the Trial Readiness Conference Report/Advance Trial Review Order at least two days prior to the Trial Readiness Conference. Failure to complete the Trial Readiness Conference Report/Advance Trial Review Orders may cause the Court to vacate the trial date and set another Trial Readiness Conference.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013)

#### **Rule 4.22.9**

### **Trial Readiness Conference; Sanctions**

**A.** Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the trial readiness conference.

**B.** If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Trial Readiness Conference Report/Advance Trial Review Order, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 2010; Rev. 1/1/2011)

### **Rule 4.22.10**

#### **Mandatory Settlement Conference (MSC)**

**A. Calendaring:** Before the court will set a trial date, and unless otherwise ordered by the court, a Mandatory Settlement Conference (MSC) will be scheduled by the court in all contested matters except in guardianships and conservatorships of the person only. The MSC will be set at the CMC. Absent a court order allowing a party to appear by telephone, the parties and their attorneys of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. The court will continue the MSC only for demonstrated good cause. A party seeking a continuance of the MSC must appear ex parte in the department to which the case is assigned. There will be no continuances on the day of the MSC absent extraordinary circumstances.

**B. Settlement Conference Panel:** The court will appoint an attorney pursuant to the qualifications set forth in the California Rules of Court, rule 2.812, as settlement conference judge to each case to assist the parties and trial counsel in reaching a settlement at the MSC. If available, two settlement conference judges will be assigned to more complex cases. Any judge not otherwise engaged may be available for additional assistance.

**C. Meet and Confer Requirements:** Counsel must meet and confer either in person or by telephone at least ten calendar days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference will be included in the Settlement Conference Brief.

**D. Settlement Conference Briefs:** Each party must prepare a Settlement Conference Brief which will be submitted to all parties, plus the required number of additional copies submitted to the designated MSC clerk, no later than 4:00 p.m. seven calendar days before the MSC. Email submission is acceptable. This Brief shall not exceed ten pages in length. At a minimum, the Brief shall contain a summary of the dispute, the procedural background of the case, any pending motions or other dispositive pleadings, a brief description of any legal issues or material facts which are not in dispute, any stipulations reached by the parties affecting trial of the matter, a specific proposal for the resolution of each contested issue and the reasons for the proposed resolution, and an addendum listing all witnesses expected to be called at trial, all documents expected to be introduced at trial, and any evidentiary objections by the opposing party. The Settlement Conference Brief shall not become part of the court file and will be available for retrieval by the filing party at the MSC.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2014)

### **Rule 4.22.11**

#### **Trial Briefs and Motions in Limine**

**A.** Unless otherwise directed by the court, all motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

**B.** Unless otherwise directed by the court, three court days before trial, the parties must provide the clerk of the trial court with a final joint witness list and joint exhibit list.

**C.** At trial call, the parties must provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Rev. 1/1/2013)

**Rule 4.22.12****Mediation Statements and Documents not Admissible Evidence**

All responsive pleadings and all other documents filed with the court or with an ADR neutral concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

(Adopted 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

**Rules 4.22.13 – 4.22.17**

(Del. 1/1/2014)

**CHAPTER 23  
LAW AND MOTION****Rule 4.23.1****Preliminary Definitions and Procedure**

A. An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure or Civil Code must be brought as a motion.

B. Parties may not bring unrelated requests for relief in a single motion but must file each in a separate motion. (Adopted 1/1/2006; Rev. & Renum. 1/1/2010)

**Rule 4.23.2****Applicability of Division Two in Probate Proceedings**

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings. (Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

**Rule 4.23.3****Filing Motion Papers**

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed at least sixteen court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to the Probate Business Office prior to the issuance of a hearing date.

C. The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the court in support of the motion.

D. Pursuant to section 4.3.2 of these rules, all cases initiated on or after 01/01/2010 will be imaged. Within ninety days of the date of filing, with the exception of lodged documents, all documents filed with the court will be shredded and recycled without further notice.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2013)

**Rule 4.23.4****Hearings**

Once set, a matter may be continued only with a written order of approval from the court. A matter “continued” by stipulation without court approval will be taken off calendar. Once the court publishes a Tentative Ruling, the motion may not be taken off calendar or withdrawn.

(Adopted 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

**Rule 4.23.5**

**Filing and Serving Opposition or Support Papers on Motion**

**A.** Opposition, joinder and reply papers must be filed and served as provided in Code of Civil Procedure section 1005. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

**B.** The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010)

**Rule 4.23.6**

**Filing of Proof of Service**

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006; Renum. 1/1/2014)

**Rule 4.23.7**

**Tentative Rulings**

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. Tentative rulings will be made available on the court's website at <http://www.sdcourt.ca.gov> (click on “tentative rulings” from the probate webpage) by 3:00 p.m. on the day prior to the hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009; Rev 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2014)