

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)