

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 18 months after the date the underlying petition is approved. Thereafter, letters may be issued or reissued upon the discretion of the court.

B. One year 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.

D. Counsel shall file declarations at the time of Final Distribution or at any hearing on an allowance for compensation, explaining why failure to comply with Probate Code section 12200 was beyond the control of the party seeking compensation or was in the best interest of the estate.

E. In estates for which a federal tax return is required the personal representative may file an ex parte request to extend letters of administration for an additional six months and to set the review hearing 18 months from the date at which the petition for administration was approved. The request for extension must be accompanied by a verified statement by the personal representative that a federal tax return is required for the estate. (See Prob. Code, § 12200, subd. (b).) If the estate has not been closed or a Probate Code section 12200 Report filed within 18 months, the petitioner will be ordered to file a Status Report and may be required to show cause in accordance with paragraphs C and D above.

(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)

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.

F. A Petition for Probate must include the names, relationships to decedent, ages, and addresses, of all persons required at number 8 of the Judicial Council Form DE-111

(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)

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 15-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

Reserved for Future Use

(Del. 1/1/2009)

Rule 4.8.5

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)

Rule 4.8.6

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 DF-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)

Rule 4.8.7

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)

Rule 4.8.8

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)

Rule 4.8.9

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)

Rule 4.8.10

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)

Rule 4.8.11

Statement of Address of Nonresident Personal Representative

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to Probate Code section 8573.

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