

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 30 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. 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)

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 the conservatorship petition 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)

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 15 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.

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)

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

1. Within 90 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 90 day compliance date.

2. Within 425 days of appointment, the Conservator of the Estate is to file the first account required under Probate Code 2620.

3. Within 790 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)