

## 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 are to be set forth in subject-matter categories for: Trusts, Conservatorships, and Guardianships, and the subtotal for each category is to be set forth.

C. On a Waiver of Final Accounting in a decedent's estate, when a loss occurs, it must be calculated into the statutory fee and applicable schedule must be attached to the petition.

D. Dispositive provisions of the Will and Codicil(s), if any, must be set forth in the Final Accounting or Waiver of Final Accounting.

E. For assets passing by intestate succession, names and family relationships of proposed distributees should be set forth, including dates of death for pre- and post-deceased persons in the line(s) of succession.

(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; Rev. 1/1/2016; Rev. 1/1/2017; Rev. 1/1/2019; Rev. 1/1/2020)

### Rule 4.15.2

#### Bank Letters and Statements

A. All 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, the report should so allege and copies should be provided.

C. The appropriate balance must be clearly highlighted or otherwise marked.

D. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

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 rule 4.3.2 for lodging documents.

F. For purposes of this section, "institution" is defined in Probate Code section 2890, subdivision (c).

G. For purposes of this section, "financial institution" is defined in Probate Code section 2892, subdivision (b). (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; Rev. 1/1/2017)

### 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 30 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 30 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. 1/1/2014)

#### **Rule 4.15.6**

##### **Reserved for future use.**

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014; Del. 1/1/2017)

#### **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 starting balance of the supplemental accounting must be for the amount withheld only, and receipts and disbursements must be reported. (See Rule 4.17.10.)

(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. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2018)

#### **Rule 4.15.9**

##### **Accounts and Reports of Conservators, Guardians of Estate, and Trustees of Trusts Funded by Court Order**

**A.** Unless otherwise ordered by the court, all accounts and reports must comply with Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575. 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. The guardian's report must set forth the guardian's address and the 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.

(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; Rev. 1/1/2016; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2020)

#### **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.

**C.** The final accounting in conservatorships must distribute all assets to a court-appointed successor, or to the personal representative of the deceased conservatee's estate, or pursuant to Probate Code section 13100. The final account may not request any orders regarding distribution of after discovered property of a deceased conservatee.

**1.** If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.

2. If distribution is proposed to the personal representative of a deceased conservatee's estate when the estate proceeding is outside of San Diego County, a copy of the Letters appointing the personal representative must be filed before the court orders distribution. If the proceeding is within San Diego County, the petition for final distribution must set forth the case number.

D. 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.

E. 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.

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

G. 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.

H. 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; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2019)

#### **Rule 4.15.11**

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

A. 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, 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.

B. If accountings have been waived pursuant to Probate Code section 2628, upon the death of the conservatee or a request to terminate the estate, the conservator must file a final accounting or a petition for discharge upon waiver of final account.

(Adopted 1/1/2008; Renum. 1/1/2013; Rev. & Renum. 1/1/2014; Rev. 1/1/2018; Rev. 1/1/2021)

#### **Rule 4.15.12**

##### **Payment of Probate Referee**

In first accounts for decedent's estates, guardianships and conservatorships, the petition must contain an allegation as to whether the Probate Referee has been paid.

(Adopted 1/1/2017)

#### **Rule 4.15.13**

##### **Report of Court-Appointed Attorneys and Guardians ad Litem**

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

1. Discuss the pending issues, to the extent such discussion would not constitute a disclosure that would be restricted by or prohibited by Evidence Code section 950 et seq., or other fiduciary duties owed by the attorney to the client.

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

3. Include a fee request in the prayer.

4. Include a recommendation regarding the ability or inability of the client's estate 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 client's estate or by the County of San Diego.

5. In conservatorship matters where the proposed conservator is the spouse or domestic partner of the proposed conservatee, include findings concerning the suitability of appointing the spouse or domestic partner as conservator pursuant to Probate Code sections 1813, subdivision (a)(2) and 1813.1, subdivision (a)(2).

6. Make a recommendation whether or not counsel may be discharged.

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

B. Proof of service of the report on petitioner, attorney for petitioner, proposed conservator, attorney for proposed conservator, and all relatives required to be named in the petition that prompted the appointment of the attorney or guardian ad litem, must be filed at least three court days prior to the hearing.

(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; Rev. 1/1/2016; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2019; Rev. 1/1/2021)

**Rule 4.15.14**

**Reserved for Future Use**

(Adopted 1/1/2016; Del. 1/1/2017)