

**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. Eighteen months after the issuance of letters, a review hearing will be set if a final or interim accounting, or the report of status of administration required by Probate Code section 12200 has not been filed. 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 a final or interim accounting, or the report of status of administration 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 of status of administration required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file such report 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, are 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; Rev. 1/1/2018)

Rule 4.8.2

Allegations in Petitions Re: Beneficiaries

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

A. A list setting forth the identification of the trustee(s) and all beneficiaries of a trust created by the decedent. (See also Rule 4.5.6.)

B. A list of contingent beneficiaries 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.

C. A list of each person provided for in the original will whose devise has been revoked in a subsequent codicil.

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

E. The deceased ancestor through which second generation heirs take, along with the ancestor's relationship to decedent, when second generation heirs are listed in the Petition for Probate.

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

Rule 4.8.3

Notice to Foreign Consul

A. When notice is required to be given to foreign consul, pursuant to Probate Code section 8113, the identity of the proper consul must be set forth in the Petition for Probate.

B. If an heir or a beneficiary whose address is in a foreign nation is a United States 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; Rev. 1/1/2017; Rev. 1/1/2018)

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 45, 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

A. 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.

B. "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; Rev. 1/1/2017)

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. Any request for less than full bond, or a waiver of bond, must include a statement by the petitioner regarding knowledge of any creditors and/or liabilities of the decedent, and the amount of each of the claim(s) and the total amount of all claims and liabilities must be set forth.

C. 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.

D. Unless otherwise ordered by the court, any waiver of bond on behalf of a minor heir or beneficiary must be executed by the court-appointed guardian of the estate or court-appointed guardian ad litem of the minor. If the property to be distributed to the minor will be held by a custodian under the California Uniform Transfer to Minors Act, the designated custodian may execute a waiver of bond on behalf of the minor heir or beneficiary, provided that the custodian is named as such in the decedent's Will, or, in the absence of a will, all requirements of Probate Code section 3906 are met.

E. Waivers of bond must be submitted on mandatory Judicial Council form DE-142/DE-111 (a-3e).

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

Rule 4.8.7

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; Renum. 1/1/2018)

Rule 4.8.8

Nondomiciliary Decedent

When petitioning to probate the will of a nondomiciliary decedent, the original will or an authenticated copy of the will and an authenticated copy of the order admitting the will to probate in the sister state or foreign nation must be submitted separate from the petition and be attached to a stiff backing or manuscript cover. In addition, a copy of each document must be attached to the Petition for Probate.

(Adopted 1/1/2021)