

CHAPTER 16
FEES, COMMISSIONS AND COST REIMBURSEMENT

Rule 4.16.1

Probate Estate Administration

A. Ordinary office expenses and travel expenses incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

- 1.** An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.
- 2.** For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expenses, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fee and work required in the administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

C. Requests for Extraordinary Fees must comply with Local Rule 4.16.2.C.4.

(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; Rev. 1/1/2011; Rev. 1/1/2017)

Rule 4.16.2

Fees and Commissions in Trusts, Conservatorships, and Guardianships

A. The court will not grant a fee request without an accounting, absent good cause.

B. Fees for court appointed counsel should be requested in the hearing as part of counsel's report and comply with the requirements of Local Rule 4.15.13.

C. Any Requests for Court Approval and/or confirmation of compensation must be set forth in a declaration that is separate from the Petition or Account.

1. Conservators seeking compensation must submit the following:

a. A completed "Fee Request Declaration" (form SDSCPR-96) for all requests for compensation in excess of \$750.00.

b. Must state whether or not funds from any outside sources have been received by the conservator, which cover in whole or in part, the costs of administration of the conservatorship.

2. Institutional fiduciaries seeking approval of fees premised upon fee schedules must submit a declaration that sets forth the published fee schedule for the period involved; the compensation paid to the fiduciary during the period; and the dates of such payment(s).

3. In guardianships and conservatorships in which the Public Guardian or County Counsel seek compensation, a declaration must be filed that sets forth information regarding the factors listed in Probate Code section 2942 together with the information required in Rule 4.16.2(C)(4) of these rules, except that the hours expended and an hourly rate of service need not be set forth.

4. In all other fee requests, the declaration must:

a. Specify the specific dates during which the services were performed;

b. Set forth categories of services rendered, together with the amount of hours expended for each such category and the hourly rate sought for each such category;

c. Each category to set forth the total number of hours performed by each person who performed the services and the hours spent by each of them;

d. Set forth the total cumulative amount of hours for each of the following: each attorney, paralegal, law clerk, legal assistant or any other person who performed the services set forth in the declaration;

e. Comply with the requirements set forth in Rule 7.703(e) of the California Rules of Court if paralegals are used.

f. Set forth information that will assist the court in determining whether the hours incurred and the rate sought are just and reasonable, including a discussion of the nature and difficulty of the tasks performed; the results achieved; the benefit to the trust, ward or conservatee; the background, skill and experience of the person rendering the service; an explanation of why the work required more than ordinary skill or judgment; and the standard rate in the community for such tasks.

5. If a trustee wishes the court to consider the factors set forth in California Rule of Court 7.776 in assessing the fee request, his or her declaration should include allegations regarding such factors.

6. If a conservator or guardian wishes the court to consider the factors set forth in California Rule of Court 7.756 in assessing the fee request, his or her declaration should include allegations regarding such factors.

7. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Fiduciaries and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving the account.

8. Fees may be sought for work related to the report and accounting for the current period.

9. In trust accountings, an allegation must be made as to the total amount of attorneys' fees and trustee's fees paid during the applicable accounting period.

D. A fee declaration is not required if court approval of attorney or fiduciary fees is not required by statute and such approval is not otherwise sought in the pleadings; unless the court orders that a fee declaration be prepared and filed.

(Adopted 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2017; Rev. 1/1/2018)

Rule 4.16.3

Periodic Payments to Trustees

On petition, the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. If the court authorizes such payments, the trustee may receive such payments only if the services described in the petition are actually rendered. The payments are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.

(Adopted 1/1/2011)

Rule 4.16.4

Payments From Other Sources

Any request for a court order approving fees, costs, and compensation to be paid from a source other than the estate must set forth an allegation of the total amount to be paid and disclose the source of the payment. If funds are to be paid from a court-supervised source in probate, the case number must be set forth.

(Adopted 1/1/2015)

Rule 4.16.5

Imposition of Lien

Where all or a portion of the fee awarded exceeds the cash on hand in the estate, the court may issue an order imposing a lien bearing simple interest at a rate ordered by the court. Ordinarily, enforcement of the lien will be deferred until the assets of the estate, subject to the lien, have been liquidated for reasons other than the satisfaction of an unpaid fee. (Adopted 1/1/2016)