

PROBATE RULES

SANTA CLARA COUNTY
SUPERIOR COURT
191 North First Street
San Jose, California 95113

Probate Calendar	(408) 882-2100 x 2649
Probate Filing	(408) 882-2100 x 2654
Probate Examiner	(408) 882-2100 x 2668
Court Investigator	(408) 882-2761
Probate Staff Attorney	(408) 882-2100 x 2668
Pre approved Matter Recording	(408) 882-2100 x 2650

INTRODUCTION

These local rules describe rules of practice in probate matters in Santa Clara County not covered by the Probate Code and the Rules of Court of the Superior Court of Santa Clara County and are subject in any particular case to the discretion of the Court. All parties are directed to the California Rules of Court, Title Seven, Probate Rules.

RULE 1 ADMINISTRATION AND GENERAL POLICIES

A. ASSIGNMENT OF MATTERS

(Effective 1/1/2017)

New Probate cases are randomly assigned to a judicial officer for all purposes. The judge in that department is the All-Purpose Judge (APJ). If a case is sent for trial to the Civil Division based on its expected length or other reasons, the APJ shall still decide all issues up to trial, including any ex parte requests and motions to continue the trial. All filed documents must contain the name of the assigned APJ and department.

(Effective 3/23/2021)

B. CASES INVOLVING EMPLOYEES

If a court employee or deputy sheriff working in the Probate Division, or a member of his or her family, is a party to a case, the matter shall be transferred to the Civil Division for assignment for all purposes.

(Effective 3/23/2021)

C. PROBATE CALENDARS

(1) ESTATE, TRUST AND CONSERVATORSHIP MATTERS

Decedent's estate, trust, and conservatorship matters are heard in the Probate Division. Demurrers, motions to strike, special motions to strike (i.e. anti-SLAPP motions), motions to quash for lack of personal jurisdiction, motions for judgment on the pleadings, discovery motions, and summary judgment motions filed in decedent's estate, trust and conservatorship matters are heard on the Probate Division's motions calendar.

(2) MENTAL HEALTH MATTERS

Mental health matters under the Lanterman Petris Short (LPS) Act., firearm prohibitions, and quarantine detentions are heard in the Probate Division.

(Effective 3/23/2021)

(3) GUARDIANSHIP, ADOPTION AND RELATED MATTERS

(a) Guardianships of the person and of the estate and all guardianship accounting petitions are heard in the Probate Division.

(b) Adoptions, terminations of parental rights, and petitions for declaration of emancipation of minors are heard in the Probate Division.

(Effective 7/1/2022)

(4) MINOR'S COMPROMISE MATTERS

Minor's compromise matters will be heard in the Probate Division unless there is an existing civil case. Minor's compromise matters filed in an existing civil case will be heard by the civil case management judges.

(Effective 3/23/2021)

D. HEARING DATES

For all matters set on probate calendars, Parties are required to reserve a hearing date in the manner set forth on the Court's website (www.sccscourt.org). Hearing dates for minor's compromise matters with an existing related civil case are set under the procedures set forth in Local Civil Rule 8C.

(Effective 3/23/2021)

E. TELEPHONIC APPEARANCES

Telephonic appearances on probate matters are governed by California Rule of Court (CRC) 3.670 and Local Civil Rules 12B through 12E. Telephonic appearances are not permitted for guardianship appointments, conservatorship appointments or petitions to confirm the sale of real property.

When a Petition for Writ of Habeas Corpus Re: Quarantine Detention is brought and an Order for Writ Issuance is granted, Petitioner shall directly call the department to which the case is assigned. The Probate Division direct line shall be indicated on the face of the Writ of Habeas Corpus Re: Quarantine Detention which is issued by the Clerk of the Court.

(Effective 1/1/2017)

F. CONTINUANCES

A continuance may be granted without the need for a court appearance only if all parties agree. The request may be made by a telephone call to the Probate Examiner's Office at least three court days before the scheduled hearing. The Court may deny any continuance request.

On the call of the calendar, a matter may be continued for such period as the Court in its sole discretion will determine if a party personally appears on the hearing date and requests a continuance. The Court discourages repeated continuances of a matter.

(Effective 1/1/2017)

G. OBJECTIONS

Unless the Probate Code requires written objections, the Court may hear oral objections at the noticed hearing, or the Court may require the objections to be made in writing. If written objections are required by the Court, the Court will continue the hearing and specify the date by which the objecting party must file and serve the written objections. Failure to file and serve such written objections on or before the date set may be grounds for overruling the objections. The following are local forms which may be used to object to the matters indicated:

- (1) Objection to Petition to Remove Conservator (attached form PB-4035)
- (2) Objection to Petition to Remove Guardian (attached form PB-4036)
- (3) Objection to Petition to Remove Personal Representative (attached form PB-4037)
- (4) Objection to Petition to Remove Trustee (attached form PB4038).
- (5) Objection to Petition to Terminate Guardianship (attached form PB-4039)
- (6) Objection to Guardianship (attached form PB-4043)
- (7) Objection (attached form PB-4045)

(Effective 1/1/2017)

H. ADVANCE CASE STATUS REPORTS

The Probate Division will post Advance Case Status Reports ("ACSRs") for cases on the General Probate and Administration of Estates calendars on the court website (www.sccourt.org) generally two court days before the hearing, and no later than 5:00 p.m. on the court day before the scheduled hearing. The most common notations for each case will be "Pre-Approved", "Continued", "Parties to Appear", and/or Probate Examiner notes listing procedural deficiencies. If a party does not have access to the internet, the ACSR's may be accessed by calling Court Services at (408) 882-2515. ACSR's will not be posted for cases on the Conservatorship or Guardianship appointment calendars.

(Effective 1/1/2024)

(1) PRE-APPROVED MATTERS

Pre-approved matters are those that have been reviewed and found satisfactory by the Court before the date set for hearing. Personal appearance by the petitioning party is not required on pre-approved matters. Pre-approved matters to which objections are made may be continued. Orders for pre-approved matters will be signed upon the calling of the probate calendar. Parties may pick up their orders at that time.

(2) PROBATE EXAMINER NOTES; CORRECTING PROCEDURAL DEFECTS

(Effective 1/1/2024)

If a matter is not pre-approved, the ACSR's will include Probate Examiner notes listing procedural deficiencies. Parties may file additional submissions to correct procedural deficiencies, and the Court, in its discretion, may consider such filings in making its order. The Probate Examiner cannot discuss in detail or advise parties of corrective action that may be taken. The court may order a matter off calendar, grant subject to additional filings, order a continuance or take any other action within its discretion.

(Effective 1/1/2024)

I. CONTESTED MATTERS HEARD BY THE PROBATE DIVISION

(Effective 1/1/2024)

(1) SUBMISSION ON THE PLEADINGS

At-issue, contested matters that are ready for hearing and that parties agree to submit on the pleadings may be taken under submission or ruled upon at the scheduled hearing.

(2) EVIDENTIARY HEARING

At-issue, contested matters that are ready for hearing and for which the total hearing time does not exceed three hours may be heard by the Probate Division. Briefs for evidentiary hearings should be filed and served three days before the hearing unless otherwise specified by the Court.

(3) HEARINGS AND TRIALS LONGER THAN THREE HOURS

Matters requiring hearings or trials longer than three hours will be set on the Civil Division's master trial calendar. Local Civil Rule 9 shall govern the proceedings, except that the Probate Division shall hear all issues up to trial

(Effective 1/1/2017)

J. PRIVACY REQUIREMENTS FOR SOCIAL SECURITY NUMBERS, FINANCIAL ACCOUNT NUMBERS, AND COURT INVESTIGATOR REPORTS

(Effective 1/1/2024)

Parties are reminded to comply with CRC 1.20 which requires the redaction of certain social security numbers and financial account numbers. In addition, Court Investigator Reports are confidential documents and are not to be attached, in whole or in part, to any pleadings or other documents filed with the Court.

(Effective 1/1/2017)

K. SUBMISSION OF WILLS OR CODICILS

(Effective 1/1/2024)

Any will or codicil submitted for filing must be submitted with PB-4079, "Will Coversheet," to preserve the originality of the document.

(Effective 1/1/2021)

RULE 2 PRETRIAL MOTIONS AND EX-PARTE PROCEEDINGS

(Effective 1/1/2024)

A. LAW AND MOTION AND DISCOVERY MATTERS - TENTATIVE RULINGS

(Effective 1/1/2024)

The Court follows CRC 3.1308(a)(1) for those departments that have elected to issue tentative rulings in probate law and motion and discovery matters. Counsel and litigants are responsible for determining whether the department hearing their motion has made this election. Those departments issuing tentative rulings will do so generally by 2:00 p.m. and no later than 3:00 p.m. on the court day preceding the scheduled hearing. If the Court has not directed oral argument, a party contesting a tentative ruling must give notice of the party's intention to appear to the other side and the Court no later than 4:00 p.m. on the court day preceding the scheduled hearing. Appearances may be made by remote (Teams), telephone or in person. The tentative ruling will automatically become the order of the Court on the scheduled hearing date if the Court has not directed oral argument and if the contesting party fails to timely notice an objection to the other side and the Court. Tentative rulings will be posted on the Court's website, www.sccscourt.org, where further information may be found. If a party does not have access to the internet, the tentative ruling may be accessed by calling Court Services at (408) 882-2515. Questions about these procedures may be addressed to the specific department where the matter is to be heard.

(Effective 1/1/2024)

B. PROBATE ORDERS

(Effective 1/1/2024)

1. FORMAT

All orders in probate matters must be complete and bear the noticed hearing date and department. In addition, the court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order. If a matter is taken off calendar, any order submitted will be returned to the party and a new order must be submitted for the re-noticed hearing date. All orders signed by a judge that are provided to counsel during a hearing must be filed before leaving the courthouse.

(Effective 1/1/2024)

2. DEADLINE FOR SUBMITTING PROPOSED ORDERS IN UNCONTESTED MATTERS

In all matters where no objections are on file, a petitioning party must submit a proposed order at least four court days in advance of the scheduled hearing date or the matter may be ordered off calendar.

(Effective 1/1/2024)

3. EX PARTE ORDERS FOR PROBATE MATTERS

(Effective 1/1/2024)

Probate matters may be presented ex parte unless a noticed hearing is required by the Probate Code, Court order, or the Local Probate Rules. An ex parte petition or application must contain sufficient facts to justify the orders requested. All ex parte petitions must be accompanied by either a Probate Uncontested Ex Parte Coversheet: Matters Submitted on the Pleadings (form PB-4080) or a Probate Ex Parte Relief Checklist (form PB-4078), as specified in subsections 1 and 2 below.

(Effective 9/17/2021)

a. Certain uncontested petitions may be submitted ex parte for judicial review without a hearing. To be considered for this review, the petition must be accompanied by the Probate Uncontested Ex Parte Coversheet: Matters Submitted on the Pleadings (form PB-4080). Petitions that may be submitted under this section are:

(Effective 1/1/2024)

- i. The following Estate Petitions with consents and waiver of notice:
 - 1) Petition for Final distribution – with waiver of accounting
 - 2) Petition for payment of creditor claims
 - 3) Petition for payment of attorney and/or administrator fees
 - 4) Petition to transfer a will
 - 5) Spousal Property Petitions

(Effective 1/1/2024)

- ii. The following Conservatorship and Guardianship of the Estate Petitions with consents and waiver of notice:
 - 1) Petition for payment of attorney and/or conservator fees
 - 2) Petition to remove money from blocked account

(Effective 1/1/2024)

- iii. The following Miscellaneous petitions:
 - 1) Petition to appoint GAL (any case type)
 - 2) Petition to approve settlement agreement (any case type) (executed by all necessary parties)
 - 3) Petition to increase/decrease bond (any case type)
 - 4) Petition for small estate collection by county counsel

(Effective 1/1/2024)

- b. Certain uncontested petitions may be submitted ex parte and will receive initial review by the Probate Attorney prior to submission to a Probate judge for review. To be considered for this review, the petition must be accompanied by the Probate Ex Parte Relief Checklist (form PB-4078). Petitions that may be submitted under this section are:

(Effective 1/1/2024)

- i. The following Estate Petitions with consents and waiver of notice:
 - 1) Petition for preliminary distribution
 - 2) Petition to appoint a special administrator
 - 3) Petition to instruct the personal representative

(Effective 1/1/2024)

- ii. The following Trust Petitions with consents and waiver of notice:
 - 1) Petition to confirm trust assets
 - 2) Petition to fill vacancy in trustee office
 - 3) Petition to instruct trustee/interpret trust provision
 - 4) Petition to modify trust terms
 - 5) Petition to confirm trust terms/existence of trust
 - 6) Petition to approve distribution

(Effective 1/1/2024)

- c. The procedures for submitting ex parte matters are as follows:

(Effective 1/1/2024)

- i. The petitioner must first determine if there is anyone who would oppose the matter if they knew about it. A notice and copy of the petition and any supporting documents must be served on all parties at least 24 hours before presenting the ex parte petition to the Court. The petition, a proposed order, and any supporting documents must be submitted along with a declaration stating when and to whom notice was given; or if there is a request to waive notice, why notice should not be given. If the matter does not require immediate action, defined to mean action within the day the matter is presented to the Court, the Court will allow 48 hours, not including weekends or holidays, for the opposing party to present the opposition.

(Effective 1/1/2024)

- ii. If there will be no objection, the petition, a proposed order (attached to Judicial Council Form EFS-020, if submitted by electronic filing), and supporting documents should be submitted with form PB-4078 or PB-4080, as specified in sections 1 and 2 above. Attorneys must file the documents by electronic filing. Self-represented parties may submit the documents by electronic filing or by presenting them to the Probate Filing Office.

(Effective 1/1/2024)

- iii. If there will be an objection, and the matter is:
 - Not urgent: Do not submit it ex parte. Instead, have the matter set for a noticed hearing on the regular Probate calendar.
 - Urgent: Attorneys and self-represented parties must submit the petition, proposed order, and any supporting documents in hard copy form to the Probate Filing Office. The documents will be submitted to a Probate Judge who will determine if the matter should be set for an ex parte hearing or set on the regular calendar. The judge's courtroom clerk will notify the submitting party whether the matter will be set for ex parte hearing or not.

(Effective 1/1/2024)

- iv. The above procedures do not apply to Ex Parte Petitions for Final Discharge (Form DE-295 / GC-395). Such petitions should be submitted in hard copy form to the Probate Filing Office.

(Effective 1/1/2024)

- v. The above procedures do not apply to temporary guardianships and conservatorships. The procedures for those matters are set forth in Local Probate Rules 11T and 12M below.

(Effective 1/1/2024)

RULE 3 ALTERNATIVE DISPUTE RESOLUTION

A. POLICY STATEMENT

The Probate Division endorses the policy statement set forth in Local Civil Rule 2A

B. PROBATE EARLY SETTLEMENT CONFERENCE PROGRAM

The Probate Early Settlement Conference Program is available to parties who stipulate, using the Probate ADR Stipulation and Order Form (see attached form PB-4063), to have a neutral conduct a settlement conference in their case. The program is governed by the following rules:

(1) **SELECTION OF NEUTRAL**

The parties may, but are not required to, select the neutral from the Court's list of program neutrals available from the Court's Probate web page. If the parties do not agree on a neutral, the Court will assign the case to the next available neutral.

(2) **STIPULATION**

All parties must complete and file the Probate ADR Stipulation and Order form (attached form PB-4063) and must file the form in the Clerk's Office.

(3) **LOCATION OF HEARING**

Probate Early Settlement Conference sessions will be held in the Probate Division or at a location designated by the neutral.

(4) **STATEMENTS, ATTENDANCE, AUTHORITY, CONFIDENTIALITY AND NOTIFICATION OF SETTLEMENT**

Submission of settlement conference statements, attendance and settlement authority are governed by CRC 3.1380. A Probate Early Settlement Conference is not a mediation, as defined in Evidence Code § 1115. There is no provision for confidentiality of communications. If the parties are able to settle the case, counsel must promptly notify the Court.

(5) **GRIEVANCES**

Any grievance regarding a neutral will be handled pursuant to Local Civil Rule 2G

(Effective 1/1/2017)

C. MANDATORY SETTLEMENT CONFERENCES

Probate matters set for trial by the Civil Division are subject to Local Civil Rule 9B which governs Mandatory Settlement Conferences.

(Effective 1/1/2017)

RULE 4 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

A. LETTERS OF SPECIAL ADMINISTRATION

Petitions for letters of special administration ordinarily will not be granted on less than 24 hours' notice to the surviving spouse or registered domestic partner, to the nominated personal representative, or to any other person who, in the opinion of the Court, appears to be entitled to notice. The petitioning party is advised to ascertain whether a bond must be posted prior to the issuance of letters of special administration.

(Effective 1/1/2005)

B. PETITION FOR PROBATE OF WILL OR CODICIL

When a petition for probate of will or codicil is filed, the original of the document being offered for probate must be lodged with the court prior to, or concurrently with, the petition. If the will or any part thereof is handwritten, a typewritten copy of the handwritten portion must also accompany the petition.

If the will is in a foreign language, a translation by an expert must be submitted at the time of filing the petition for probate. An affidavit or declaration as to the expertise of the translator must accompany the translation.

C. ALLEGATIONS RE HEIRS, BENEFICIARIES, AND FIDUCIARIES

In a petition for letters testamentary, letters of administration, letters of administration with will annexed, or letters of special administration, all heirs under Probate Code Sections 6402 and 6402.5 known to the petitioner, and all beneficiaries living at the time of the decedent's death, whether vested or contingent, who at the time of the decedent's death might be entitled to share in the distribution of the estate, whether it consists of separate or community property, must be specifically named. If any named beneficiary predeceased the decedent, that fact must be alleged in the petition with the date of death if known. All beneficiaries provided for in the will whose interests have been revoked by a subsequent codicil must also be named.

Where the will devises property to a fiduciary (e.g., trustee, custodian or guardian), the petition, in addition to giving the name and address of the fiduciary, must list the names and addresses of all known beneficiaries of the trust, custodianship, guardianship, etc., who are living or in existence at the date of death of the decedent. Alternate or successor trustees, custodians, or guardians need not be named in the petition. If a post office box is listed as the mailing address for a fiduciary or beneficiary, the street address of the fiduciary or beneficiary must also be shown if available.

D. PUBLICATION

The publication of the Notice of Petition to Administer Estate is sufficient notice of all wills or codicils that are offered for probate and filed with, and specifically referred to in, the petition. Wills or codicils not specifically referred to in the petition must be presented to the Court in an amended or subsequent petition and a new Notice of Petition to Administer Estate must be published.

Where the will has been admitted to probate, no new or additional publication of the Notice of Petition to Administer Estate is required upon the filing of a subsequent petition for letters testamentary or letters of administration with will annexed. See attached form PB-4000 for information to assist in arranging for publication.

(Effective 7/1/2006)

E. LETTERS

Where the will has been admitted to probate and either there is a vacancy in the office of the personal representative or no letters testamentary have been granted, a new petition for letters testamentary or for letters of administration with will annexed, whichever is applicable, must be filed prior to the issuance of letters.

If the will is denied admission to probate after the filing of a petition for letters testamentary or for letters of administration with will annexed, e.g., in the event of a will contest, letters of administration may be granted on the basis of the petition already on file. No new publication of the Notice of Petition to Administer Estate is required.

F. REMOVAL OF PERSONAL REPRESENTATIVE

Individuals requesting removal of a personal representative may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Personal Representative (attached form PB-4042). Anyone objecting to a petition to remove the personal representative may use the local form entitled Objection to Petition to Remove Personal Representative (attached form PB-4037).

(Effective 1/1/2008)

RULE 5 BONDS**A. AMOUNT OF BOND UNDER INDEPENDENT ADMINISTRATION OF ESTATE ACT (IAEA)**

If a bond is required of the personal representative, the amount of bond required of a personal representative granted full authority under the IAEA must include the estimated value of the personal property, the estimated net proceeds of the real property that may be sold under the IAEA, and the estimated value of the annual gross income of all of the property belonging to the estate.

B. NON-RESIDENT PERSONAL REPRESENTATIVE

The Court will ordinarily require a non-resident personal representative to post bond, even if the will waives bond, unless waivers of bond from all heirs or beneficiaries are filed, in which case the Court, in its sole discretion, may not require a bond.

(Effective 1/1/2009)

C. INCREASE OR DECREASE IN AMOUNT OF BOND

When it appears to the Court that the bond of any fiduciary is insufficient, the amount of the bond must be increased at the discretion of the Court. Counsel, personal representatives, guardians, and conservators are referred to CRC Rule 7.204, with regard to their duty to petition to increase the bond. When it appears that the bond of any fiduciary is in excess of the required amount, the fiduciary may petition the Court to reduce the bond. This petition may be presented ex parte. Fiduciaries and counsel should be aware that it is their responsibility to see that the bond amount is sufficient. Conservators and guardians of the estate must seek increase in bond amounts when necessary to meet the requirements of Probate Code § 2320 and CRC 7.207.

(Effective 1/1/2009)

D. REDUCTION OF BOND IN FOLLOWING YEARS BY DEPOSITING ASSETS IN BLOCKED ACCOUNT AND PROVIDING RECEIPTS

At any time, a fiduciary may request a reduction of bond or no bond if monies and/or securities have been deposited into a blocked account in a financial institution or trust company. The order as well as the account must provide that no withdrawals be made without prior authorization by the Court.

A petition to reduce the bond by blocked account deposits may be made ex parte. It is the responsibility of the fiduciary to prepare the Judicial Council form "Order to Deposit Money into Blocked Account" (form number MC 355). This form must be presented to the court for signature at the time the petition to reduce the bond is heard. The fiduciary must also prepare the Judicial Council form "Receipt And Acknowledgement of Order for the Deposit of Money Into Blocked Account" (form number MC 356) and present it (along with a copy of the Order to Deposit Money) to the financial institution accepting the deposit for signature by an officer of that institution. The depository must file the Receipt within 15 days of the date of receipt. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

Where the Court has approved such an order, the order appointing the fiduciary and letters of conservatorship or letters issued in an estate administration matter must state that the fiduciary has no authority to take physical possession of money or other property without specific court order. If a fiduciary or party is using the "Order to Deposit Money Into Blocked Account" form for deposits in other than an interest bearing savings account, the fiduciary or party should adapt the form appropriately.

A petition for withdrawal of funds must be made on Judicial Council form "Petition For Withdrawal of Funds From Blocked Account" (form number MC 357), and the petitioner must submit for the Court's signature the Judicial Council form "Order For Withdrawal of Funds From Blocked Account" (form number MC 358).

(Effective 1/1/2017)

E. BOND ON BORROWING

A petition to borrow money must contain information sufficient for the Court to determine the proper bond amount.

F. BOND NOT REQUIRED WHERE TRUST COMPANY SERVES AS FIDUCIARY

When a trust company is serving as a guardian or conservator of the estate or as a trustee, bond is not required under Probate Code § 15602.

(Effective 1/1/2009)

G. STATEMENT RE SUFFICIENCY OF BOND IN REPORTS ACCOMPANYING ACCOUNTINGS

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code § 2320 and CRC 7.207, and, if not, what steps are being taken to comply those requirements.

(Effective 1/1/2017)

RULE 6 THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

A. PETITION FOR AUTHORITY TO ADMINISTER ESTATE PURSUANT TO THE INDEPENDENT ADMINISTRATION OF ESTATES ACT (IAEA)

Full or limited authority to act pursuant to the IAEA may be requested in the petition for letters or by a separate petition.

B. EXTENT OF POWER DEPENDENT ON DATE LETTERS ISSUED

The IAEA has been amended several times. The date letters were last issued establishes the extent of the powers that can be exercised under the IAEA.

C. REPORT OF ACTIONS TAKEN UNDER THE IAEA

In a petition for preliminary distribution or final distribution, all actions taken under the IAEA must be reported as set forth in CRC Rule 7.250. Additionally petitioner must report the amount paid or received, if applicable.

(Effective 1/1/2004)

D. FILING NOTICE OF PROPOSED ACTION WITH COURT

A copy of any Notice of Proposed Action must be filed with the Court together with the proof of service.

RULE 7 SALE UNDER COURT SUPERVISION

A. PUBLICATION OF NOTICE OF INTENTION TO SELL

The notice of intention to sell must be published in decedents' estates where the personal representative has not been given the power of sale in the will. Publication is not required where the personal representative is using the Notice of Proposed Action procedure under IAEA. For sales in conservatorship and guardianship proceedings, see Probate Code §2543(b) and (c), and §2591.5.

(Effective 7/1/2007)

The report of sale must be filed within 1 year of the last published date of notice of intention to sell. It is advisable that the published notice call for "cash or such credit terms and conditions as the Court may approve." There cannot be a variance in the terms of sale between those shown in the petition and those in the published notice.

The published notice of intention to sell real property is a solicitation for offers. No offer can be accepted prior to the expiration of the notice period specified in the notice of intention to sell.

On filing an appropriate affidavit or declaration, the Court may sign an order shortening the notice period to five days, with sale permitted on the sixth day after publication. The practical effect of this order is that only one publication is necessary.

B. PETITION FOR CONFIRMATION OF SALE OF REAL PROPERTY; SALE PROCEDURE

(1) TIME FOR FILING PETITION

A petition for confirmation of sale should be filed by the personal representative within 30 days after the date of acceptance of a contract. Note that the property is initially sold by the personal representative and then returned to the Court for confirmation.

(2) CONTRACT OF SALE TO BE FILED WITH COURT

At the time of filing the petition for confirmation, the petitioner must file a copy of the contract of sale.

(3) DEED OF TRUST

Upon an appropriate showing by the petitioner, the Court may approve a sale where part of the consideration is to be secured by a deed of trust of which the personal representative is the beneficiary.

(4) SALE SUBJECT TO ENCUMBRANCE

Sale of real property will not ordinarily be confirmed when the purchaser assumes or takes subject to an existing encumbrance, if as a result the estate remains subject to a contingent liability on the encumbrance (i.e., "wraps"). The petition must set forth the facts pertinent to such assumption agreement.

(5) SALES OF FRACTIONAL INTERESTS

Where the estate owns only a fractional interest in the real property, the petition must state whether the sale by the estate is conditioned upon closing of a sale of the unowned fraction.

RULE 8 PETITION FOR INSTRUCTIONS AND OTHER INSTRUCTIONS**A. PETITION FOR INSTRUCTIONS**

In decedents' estates, guardianships, and conservatorships, a petition for instructions is available only when no other procedure is provided by statute. For example, the Court will not determine how a will should be interpreted or the manner in which an estate should be distributed on a petition for instructions. Such direction can be obtained only by a petition for distribution or by a petition to determine persons entitled to distribution.

B. APPOINTMENT OF SUCCESSOR TRUSTEE

A petition seeking appointment of a successor trustee or cotrustee should include a description of the procedure required by the trust instrument for such appointment, detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust, whether some or all of the beneficiaries of the trust have been consulted about the appointment of the proposed trustee, and a recommendation for the amount of the bond of the proposed trustee or a showing of good cause why a bond should not be required.

RULE 9 ACCOUNTS, REPORTS, FEES, COMMISSIONS, AND DISTRIBUTION**A. FORM OF ACCOUNTS****(1) ACCOUNTS IN DECEDENTS' ESTATES AND IN TRUSTS.**

All accounts filed in decedents' estates and in trusts, must follow the format described in Probate Code § 1061:

(Effective 7/1/2008)

a. TIME PERIOD

All accounts must set forth specifically the period covered by the account.

b. SUMMARY OF ACCOUNT

Accounts must contain a summary or recapitulation in substantially the following format:

SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively, as set forth in this Summary of Account. The attached supporting schedules are incorporated by reference.

CHARGES

Amount of Inventory and Appraisal (or if subsequent account, amount chargeable from prior account)

Additional Property Received

(or supplemental inventories) \$ _____

Receipts during Account Period \$ _____

Other than Principal (Schedule) \$ _____

Gains on Sales (Schedule)

Net Income from Trade or Business (Schedule) \$ _____

Total Charges: \$ _____

CREDITS

Disbursements during Account

Period (Schedule) Losses on Sales

(Schedule)(e.g., property distributed, homestead or other property \$ set apart)

Net Loss from Trade Or Business (Schedule) \$ _____

Distributions (Schedule) \$ _____

Property on Hand (Schedule) \$ _____

Total Credits: \$ _____

c. SEPARATE SCHEDULES

Each figure on the summary of the account must be supported by separate schedules. These must include schedules of receipts and disbursements showing the date, amount, payor, payee, and nature or purpose of each item. Whenever possible, disbursements must show check numbers. The gain and loss schedules must reflect the sales price, the inventory or carrying value, and resultant gain or loss. The schedule of assets on hand must be itemized showing the inventory or acquisition value. For all accounts, there must be an additional schedule showing estimated market value of assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of all accounting periods subsequent to the initial account. The fiduciary may provide a good faith estimate for the value of real estate, a closely held business, or other assets without a ready market.

Whenever an accounting period exceeds one year, or whenever income is received from any particular source more than twelve times in an accounting period, or whenever payments are disbursed to a particular payee more than twelve times in an accounting period, it is required that the schedules for receipts and for disbursements be categorized into subschedules

reflecting the particular income sources or payees for whom there are more than twelve entries per accounting period. See 2 California Decedent Estate Practice §§ 19.19 and 19.22 (Cal CEB 1986).

When a trust accounting submitted for approval by the Court contains disbursements for trustee or attorney fees, the trustee or attorney must furnish evidence to support the disbursements for fees in a manner consistent with the requirements of the trust instrument. If the trust permits “reasonable fees” without court approval, for instance, the trustee shall furnish an explanation of how the “reasonable fee” was calculated

(Effective 1/1/2017)

d. **INCOME AND PRINCIPAL ACCOUNTING**

All accounts for entities that have separate principal and income beneficiaries must allocate receipts and disbursements between principal and income.

If a financial institution makes only online statements available to the fiduciary, the fiduciary may submit exact printed copies of the online statements in place of the original statements required by Probate Code § 2620 (c) and shall attach to the printed copies of the statements submitted for each account a declaration under penalty of perjury that the printed copies are exact replicas of the online statements provided by the financial institution.

(Effective 7/1/2011)

e. **WAIVER OF ACCOUNT**

The petition for final distribution on waiver of account must contain the information required in CRC 7.550, as well as the fair market value of assets on hand, and must comply with CRC 7.551-7.552.

(Effective 7/1/2008)

(2) **ACCOUNTINGS IN GUARDIANSHIPS AND CONSERVATORSHIPS**

(Effective 7/1/2008)

- a. All accountings in guardianships and conservatorships filed on or after January 1, 2008, must follow the content and format required in CRC 7.575. Accountings are designated as either standard or simplified. All accountings must use Judicial Council Form GC-400 (SUM)/GC-408(SUM) for the Summary of Account. Guardians and conservators presenting standard accounts may, but are not required to, use the optional Judicial Council forms designated as GC-400. Those guardians and conservators presenting standard accountings who do not use the optional Judicial Council forms are required to use the content and format called for in those forms, but may submit accountings prepared on conventional accounting programs. Guardians and conservators presenting simplified accounts must use the Judicial Council forms designated as GC-405.

- b. **Organization of Schedules:** All accountings must provide all information required in Probate Code §§ 1060 – 1064.

Receipts schedules must use the categories and format used by the optional judicial forms:

- Dividends; Interest; Pensions, Annuities, other Periodic Payments; Rent; Social Security, Veterans Administration, and Other Public Benefits; Other Receipts.

Schedules for Receipts of Principal, Gains on Sales, Income from Business, and Loss on Sales do not have a mandated format.

Disbursements schedules must use the categories used by the optional Judicial Council forms:

- Caregiver Expenses; Residence or Long Term Care Facility Expenses; Ward’s Educational Expenses; Fiduciary and Attorney Fee Expenses; General Administration Expenses; Investment Expenses; Living Expenses; Medical Expenses; Property Sales Expenses; Rental Property Expenses; and Other Expenses. See CRC 7.575(e).

(Effective 7/1/2008)

- c. At the time the Court appoints a conservator or guardian, and unless the court waives the requirement of the conservator or guardian to file periodic accountings with the Court, the court must set a compliance date for the conservator or guardian to file his or her first account and report, which must be on the Friday calendar at 10:00 a.m. no later than 60 days after the first year anniversary of the appointment of the conservator or guardian. If the conservator or guardian has filed the accounting, this will be a nonappearance matter. At the time the court hears an account and report, it must set a compliance date for the next account and report, which must be on the Friday calendar at 10:00 a.m. no later than 60 days after each subsequent biennial anniversary of the conservatorship or guardianship.

(Effective 7/1/2014)

d.

(Effective 1/1/2011)

Pursuant to Probate Code § 2620, the guardian or conservator may elect to lodge with the Court the originals of the account statements and all other documents referenced in § 2620(c). The originals of the all such documents shall be released by the Court as provided in § 2620(c)(8)

If a financial institution makes only online statements available to the fiduciary, the fiduciary may submit exact printed copies of the online statements in place of the original statements required by Probate Code § 2620 (c) and shall attach to the printed copies of the statements submitted for each account a declaration under penalty of perjury that the printed copies are exact replicas of the online statements provided by the financial institution.

(Effective 1/1/2011)

(3) **STATEMENT RE SUFFICIENCY OF BOND IN REPORTS ACCOMPANYING ACCOUNTINGS**

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code § 2320 and CRC 7.207, and, if not, what steps are being taken to comply with those requirements.

(Effective 1/1/2017)

B. ALLEGATIONS REGARDING CREDITOR'S CLAIMS AND REPORT OF ACTIONS TAKEN UNDER IAEA

It is not sufficient in any petition for distribution to allege merely that all claims have been paid. Petitioners must provide all information required under CRC Rule 7.403. The allegations regarding disposition of all claims must appear in the petition for final distribution even though they may have appeared in whole or in part in prior petitions. See 5.C for report of actions taken under IAEA.

C. STATUTORY COMMISSIONS AND FEES

All parties and counsel are directed to CRC Rules 7.700 and 7.701.

(Effective 1/1/2009)

(1) PAYABLE AFTER COURT ORDER

Statutory commissions and fees (herein "statutory compensation") are payable only after a Court order authorizing them.

(2) BOTH HALVES OF COMMUNITY PROPERTY PROBATED

If both halves of the community property are properly included in the probate proceeding, statutory compensation calculated on both halves of the community property will be allowed.

(3) CALCULATION

Unless statutory compensation is waived, calculation of the statutory compensation (including calculation of the fee base) and any prior payments of statutory compensation must be included in the petition for compensation.

(4) ALLOWANCE ON ACCOUNT

Allowances on account of statutory compensation will generally be allowed in proportion to the work completed.

(5) ACCOUNTING WAIVED

Where the accounting is waived, the basis of the statutory compensation shall be the inventory value of the estate plus, if applicable, receipts, on sales, less losses on sale, as provided in CRC 7.550 and 7.705. Such receipts and gains or losses must be reflected in the report of the personal representative.

(Effective 1/1/2009)

(6) PAYMENT OF COSTS, FEES, AND COMMISSIONS WHERE CASH INSUFFICIENT

Where the estate at final distribution has no cash or insufficient cash to pay costs, attorney's fees, and/or personal representative's commissions, an explanation of the source of payment of these obligations must be submitted.

D. COMPENSATION FOR EXTRAORDINARY SERVICES**(1) EXPLANATION REQUIRED**

A detailed explanation of the extraordinary services performed and the amount of compensation requested for such services must be separately stated in a declaration under penalty of perjury executed by the person rendering the services. See also the standards set forth in Local Probate Rule 9G. The explanation must include the statement of facts required by CRC Rule 7.702.

(Effective 1/1/2004)

The Court may consider the amount of statutory fees when determining compensation for extraordinary services.

(2) COURT APPEARANCE

In all cases in which there is a request for compensation for extraordinary services, the attorney for the personal representative or the personal representative must be present at the hearing, unless the matter is on the approved calendar.

(3) ALLOWANCE ON ACCOUNT

Allowances on account of compensation for extraordinary services ordinarily will not be allowed.

E. COSTS

Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items advanced by such party must be separately stated with a description of each cost item.

F. COMPENSATION FOR GUARDIANS, CONSERVATORS, TRUSTEES, AND THEIR COUNSEL, AND FOR COUNSEL FOR A CONSERVATEE OR WARD

A petition for compensation of a guardian, conservator, trustee, and counsel, or for counsel for a conservatee or ward, must be accompanied by a complete statement of the services rendered, an explanation of the value or benefit of those services to the estate, and the total amount requested for such services, made under penalty of perjury and executed by the person rendering the services. The nonexclusive factors the Court may consider in determining the fees of a guardian or conservator are listed in CRC 7.756. The nonexclusive factors the Court may consider in determining the fees of a trustee are listed in CRC 7.776. Where a trust accounting that is submitted for court approval shows payments made to the trustee, guardian, conservator, or his or her counsel, or counsel for a ward or conservatee, it must be accompanied by the information described in this paragraph, even though the trust instrument may provide for such payments without requiring court approval. All petitions for compensation to a conservator, guardian, or counselor for a conservator, guardian, conservatee, or ward, or for compensation to a trustee or counsel for a trustee in a matter where a trust has been created to hold the assets of a conservatee or ward, must be served on the Court Investigator as well as on all persons required under the law to be served. The local form entitled "Referral for Investigator - Compensation" (attached form PB-4064) must be completed and submitted at the time the Petition is filed.

(Effective 7/1/2014)

The petition shall not include charges made for time spent in clarifying or explaining billing entries to the Court for which minimal or incomplete information, in the judgment of the Court, was initially provided, or for correcting or supplementing pleadings or other papers which, in the judgment of the Court, were procedurally deficient when initially submitted.

(Effective 1/1/2016)

A conservator or guardian who is a professional may not necessarily be compensated for all services rendered at that person's ordinary professional rate. Requests for fees by family member conservators, including registered domestic partners, for visits to the conservatee will ordinarily not be approved.

(Effective 7/1/2008)

G. NO COMPENSATION WITHOUT COURT ORDERS

There is no authority for paying any compensation to an executor, an administrator, a guardian, a conservator, or an attorney for any such fiduciary, or an attorney for the conservatee or ward, from the estate in advance of a Court order authorizing such payment. There is no authority for paying any compensation to the trustee or the attorney for the trustee from a trust to which CRC 7.903 applies in advance of a Court order authorizing such payment.

(Effective 7/1/2005)

H. PROPERTY TO BE DISTRIBUTED AND DISTRIBUTEES MUST BE LISTED

A petition for distribution must describe in detail all property to be distributed as set forth in CRC 7.651-652.

(Effective 7/1/2004)

An order of distribution must be drafted so that it is complete without reference to the petition, and without reference to any documents that are not part of the order. A complete description of the property to be distributed, including legal descriptions of all assets (e.g., real property, securities, and security interests) and the specific numerical amount to be distributed and not simply percentages, and the full names of all distributees must be set forth in the petition and the order. An order of distribution should include the current address of real property and the assessor's parcel number of the property.

(Effective 1/1/2015)

I. AGREEMENTS FOR DISTRIBUTION OF ASSETS

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be on file a written agreement signed by all parties affected by the distribution.

J. FILING OF RECEIPTS FOR PRELIMINARY DISTRIBUTIONS

Receipts for property distributed pursuant to a petition for preliminary distribution must be on file before the Court will approve a petition for final distribution.

(Effective 7/26/2000)

RULE 10 SPOUSAL OR REGISTERED DOMESTIC PARTNER PROPERTY PETITIONS

A. WHEN FILED WITH PETITION FOR PROBATE

A spousal or registered domestic partner property petition must be filed separately from a petition for probate of the will or for administration of the estate, as set forth in CRC Rule 7.301. If the two are filed simultaneously, or if probate proceedings are already pending, an additional filing fee for the spousal or registered domestic partner property petition will not be required. Both petitions must be filed under the same case number.

(Effective 1/1/2005)

B. SURVIVORSHIP CONDITION IN WILL

If the right of a spouse or registered domestic partner to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse or registered domestic partner until the expiration of the time period. If the petition is filed before the expiration of the survivorship period, a separate declaration executed by the petitioner after the survivorship period has expired must be filed with the Court.

(Effective 1/1/2005)

RULE 11 CONSERVATORSHIPS

A. PETITION FOR APPOINTMENT OF CONSERVATOR

(1) BONDS

Bond will ordinarily be required for the first year for the conservator of the estate, even though the conservatee has signed a nomination of conservator waiving bond. The provisions of Local Probate Rules 5.C through 5.F apply to conservators. The amount of the bond must include one year's income from all sources of income of the conservatee, any sums required under Probate Code § 2320(c), and the fair market value of real property for conservators authorized to sell or encumber such property pursuant to Probate Code §2590.

(Effective 7/1/2010)

(2) INDEPENDENT POWERS

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reasons for the need for each power requested.

(Effective 1/1/2008)

(3) MEDICAL TREATMENT POWER

A petition seeking authorization to give informed consent for medical treatment of a conservatee must be supported by an appropriate declaration on the Judicial Council form as described below, furnishing evidence required by Probate Code § 813, stating that there is no form of medical treatment for which the conservatee has the capacity to give consent and the reasons therefore and signed by a medical practitioner or licensed psychologist, which must be filed with the Court prior to the hearing. This form may be filed as an Attachment to the Petition for Appointment of Conservator and served upon all persons who receive

the Petition. If this form is not attached to the Petition, it must be served separately by mail or personally, at the option of petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching two Confidential Document Cover Sheets (see attached form PB-4003) to it at the time it is filed. It is required to use Judicial Council form GC-335, "Capacity Declaration-Conservatorship," as described below:

(Effective 1/1/2009)

- a. For a Conservatorship of the Person only, In Which No Dementia Powers Are Being Sought: California Rules of Court require the use of Judicial Council form GC-335 to provide the evidence necessary to support a finding by the Court that a conservatee lacks the capacity to give an informed consent for any form of medical treatment.
- b. For a Conservatorship of the Person only, With Request for Dementia Powers: Attach Judicial Council form GC335A to Judicial Council form GC-335.

(Effective 7/1/2004)

If the Petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration – HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity – HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified.

(Effective 1/1/2006)

(4) EVIDENCE REQUIRED TO SUPPORT PETITION FOR CONSERVATORSHIP OF ESTATE OR PERSON AND ESTATE

Because a Conservatorship of the Estate or of the Person and Estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds the estate, a petitioner who seeks appointment of a conservator of the estate and is using a medical or psychological professional as declarant must submit a Judicial Council form GC-335, "Capacity Declaration – Conservatorship" with attached form PB-4015, "Capacity Declaration – Conservatorship of the Estate Attachment" attached, to provide evidence establishing that the proposed conservatee suffers from a deficit in mental functions that significantly impairs the proposed conservatee's capacity to make decisions, consistent with the requirements of Probate Code § 811.

(Effective 1/1/2009)

If the petitioner who is not relying upon a medical or psychological professional to complete the Capacity Declaration wishes to seek appointment of a conservator of the estate, the petitioner must have a lay declarant complete the "Layperson's Declaration re Legal Capacity" shown as attached form PB-4016 to these Local Rules.

(Effective 7/1/2006)

The Capacity Declaration may be filed as an Attachment to the Petition for Appointment of Conservator and served upon all persons who receive the Petition. If the Capacity Declaration is not attached to the Petition, it must be served separately by mail or personally, at the discretion of the petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching a completed Confidential Document Cover Sheets (see attached form PB-4003) to it at the time it is filed.

(Effective 7/1/2012)

If the petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration – HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity – HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified.

(Effective 1/1/2006)

B. REFERRAL FOR INVESTIGATOR'S REPORT; TRANSMITTAL OF DOCUMENTS TO COURT INVESTIGATOR

A local form entitled "Referral for Investigator's Report-Conservatorship" (attached form PB-4002) must be completed and signed under penalty of perjury by the proposed conservator and submitted at the time the petition is filed. This form shall be confidential. The proposed conservator shall submit with the referral a color photograph of the proposed conservatee.

(Effective 7/1/2012)

C. NOTICE OF HEARING

The petitioner should determine how much time will be required for any agency (e.g., Court Investigator's office, San Andreas Regional Center, etc.) to complete its report or evaluation and set the petition for hearing accordingly.

D. DUTIES OF CONSERVATOR

To assure that their duties and obligations are understood, all proposed conservators must file with the Court, before Letters of Conservatorship are issued, the Judicial Council form entitled "Duties of Conservator." The form may be signed and submitted prior to the date set for hearing. It is not necessary for proposed conservators to check boxes on page 4 of the form relating to acquisition of the handbook. Local Probate Rule 11F.

(Effective 1/1/2006)

E. CONTESTED MATTERS

When a party becomes aware that a matter will be contested, that party must advise the Court of the estimated time necessary to hear the matter.

The Court's primary concern is the health and welfare of the conservatee. Parties in a contested matter should be prepared to proceed on the day set for hearing. The Court will ordinarily hear brief testimony of the objecting parties and render a decision forthwith.

F. PURCHASE OF HANDBOOK AND VIEWING OF FILM

Before letters of conservatorship are issued, all conservators (except corporate or institutional conservators) must obtain a copy of the handbook for Conservators published by the Judicial Council of California and view a film on the duties and responsibilities of a conservator. Proper proof of the purchase of the handbook and viewing of the film will be required.

The handbook and local supplement will be available for purchase at the Probate Clerk's Office. The cost of the handbook may be reimbursed from the conservatorship estate. The film can be viewed online at <https://www.youtube.com/watch?v=A-SX6YkFsP4>. If a proposed conservator does not have access to a computer to view the film they can contact the court investigator's unit, 408-882-2761, to make an appointment to view it at the courthouse. The proposed conservator will be required to complete the "Verification of Conservatorship Video Viewing" (Attachment PB-4076)

(Effective 1/1/2020)

G. ORDER APPOINTING CONSERVATOR

On the Judicial Council form entitled "Order Appointing Probate Conservator," paragraphs 8 and 22 concerning ability to vote should be left blank. The Court will make its own determination at the hearing based upon the Court Investigator's report. Paragraphs 10 and 21 concerning fees refer only to Court-appointed counsel for the conservatee. These paragraphs do not apply to the attorney for the conservator. In all cases, the following information should be inserted at paragraph 11: Court Investigations Unit, 191 North First Street, San Jose, California 95113, telephone (408) 882-2761.

(Effective 7/1/2015)

H. FILING OF INVENTORY AND APPRAISAL

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. A copy must also be served on the Court Investigator. Where the conservatorship estate consists of community property managed by a nonconservatee spouse or registered domestic partner, who either is or is not the conservator, the community property is not administered as part of the conservatorship estate, should not be part of the inventory, and should not be accounted for. (See Probate § 3051.)

(Effective 1/1/2008)

At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the conservator and on the attorney for the conservator.

(Effective 7/1/2008)

I. PLACEMENT AND LEVEL OF CARE ASSESSMENT FOR CONSERVATEE

An evaluation of level of care of the conservatee in compliance with Probate Code § 2352.5 shall be filed by the conservator within 60 days of appointment. The evaluation shall be filed on the Judicial Council form entitled "Determination of Conservatee's Appropriate Level of Care (P.C. § 2352.5)." A copy must also be served on the Court Investigator.

(Effective 7/1/2012)

At the time of appointment, the Court will issue an order requiring the conservator to file the evaluation and set a compliance review approximately 64 calendar days after the appointment to confirm that the evaluation has been filed. If the evaluation has not been filed, the Court may issue an order to produce the evaluation, which will be served by certified mail on the conservator and on the attorney for the conservator.

(Effective 1/1/2012)

J. LETTERS OF CONSERVATORSHIP OF THE ESTATE

The conservator is advised to record letters of conservatorship of the estate in any county where real property belonging to the conservatee is located. (Probate Code section 1875.)

K. ACCOUNTINGS: REFERRAL TO COURT INVESTIGATOR

At the time of filing of the conservator's accounting, a "Referral For Court Investigator" form (attached form PB-4002) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Local Probate Rule 9A. (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

L. SALE OF CONSERVATEE'S RESIDENCE

The sale of the conservatee's residence (including a mobile home) will not be approved by the Court until a Court Investigator's report showing the necessity for the sale is on file. The conservator must file a declaration complying with Probate Code section 2540(b) whenever the conservator seeks authorization to sell the conservatee's present or former personal residence. The required "Referral for Court Investigator – Conservatorship" form (attached form PB-4002) shall be submitted with the notice of hearing and the required declaration.

(Effective 7/1/2012)

Sale of the residence must comply with the procedures required for sale of real or personal property and Probate Code § 2591.5.

(Effective 1/1/2008)

M. CHANGE OF RESIDENCE OF CONSERVATOR OR CONSERVATEE

When the address of the conservatee will be changed, the Pre-move Notice of Proposed Change of Personal Residence of Conservatee or Ward (Judicial Council form GC-079), and also the Post-Move Notice of Change of Residence of Conservatee or Ward (Judicial

Council form GC-080) must be filed with the Court. This is in addition to the Notice requirements of Probate Code § 2352 and CRC 7.1063.

When the address of the conservator will be changed, the Notification of Change of Address of Conservator/Guardian (attached form PB-4047) must be filed with the Court

(Effective 7/1/2012)

N. REMOVAL OF CONSERVATEE FROM CALIFORNIA

A conservatee who is under a conservatorship of the person and who is a California resident may be moved from California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the conservatee must be returned to California within four months unless a conservatorship proceeding (or its equivalent) is commenced in the place of the new residence. If a conservatee is not returned to California, the conservator must file a declaration showing proof of the establishment of the conservatorship (or its equivalent) in the new jurisdiction. (See Probate Code § 2352.) Petitioner must submit with the local form entitled "Referral for Court Investigator" (attached PB-4002), the notice of hearing and the original petition to move a Conservatee from California, for review by the Court Investigator.

(Effective 7/1/2012)

O. APPOINTMENT OF LIMITED CONSERVATOR FOR THE DEVELOPMENTALLY DISABLED

If the requested conservatorship is for a developmentally disabled adult, the proceedings must comply with the limited conservatorship code sections, even though the petition requests establishment of a general conservatorship as an alternative.

A copy of the notice of hearing and the petition must be sent to the Public Defender assigned to the conservatorship calendar and to the appropriate Regional Center. The addresses for the local agencies are:

Probate Deputy
Office of the Public Defender
120 W. Mission Street
San Jose, California 95110

San Andreas Regional Center
Attn: Regional Center Psychologist
P.O. Box 50002
San Jose, California 95150

P. REMOVAL OF CONSERVATOR

Individuals requesting removal of a conservator may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Conservator (attached form PB4040). Anyone objecting to a petition to remove the conservator may use the local form entitled Objection to Petition to Remove Conservator (attached form PB-4035).

(Effective 1/1/2008)

Q. TERMINATION OF CONSERVATORSHIP

Petitioner must submit with the local form entitled "Referral for Court Investigator-Conservatorship" (attached form PB-4002) the notice of hearing and the original petition to terminate a conservatorship, for review by the Court Investigator.

(Effective 7/1/2012)

Upon termination of a conservatorship, all claims filed by the Court Investigator's unit for its services, unless waived, must be paid before the Court will sign an order settling the final account. See CRC Rules 7.1052 and 7.1054.

(Effective 7/1/2004)

R. DEATH OF CONSERVATEE

(1) TERMINATION UPON DEATH WHEN ACCOUNT IS DUE

Upon the death of the conservatee, the conservator shall turn over the conservatee's assets to the appointed personal representative or, if none, to the person or persons entitled thereto, less a reasonable reserve for closing expenses and attorney and conservator fees.

(Effective 7/1/2005)

The conservator's final account shall include an account for the period ending on the date of death of the conservatee, and shall show all property on hand as of the date of death of the conservatee. Additionally, pursuant to Probate Code § 2620 (b), a supplemental accounting, to be incorporated in the final account and report, shall reflect all post-death transactions and showing property on hand as of the filing of the accounting. If a personal representative has been appointed in a probate proceeding following the death of the conservatee, then the probate case number must be set forth in the final report and account.

(Effective 1/1/2009)

(2) TERMINATION UPON DEATH WHEN NO ACCOUNT IS DUE

Upon the death of the conservatee, if no account is due, the conservator must file a notice of death of conservatee with a photocopy of the conservatee's death certificate attached.

(Effective 7/1/2012)

S. CONFIDENTIAL SUPPLEMENTAL INFORMATION

The supplemental information required of conservators by Probate Code §1821(a) at appointment must be filed on Judicial Council form GC-312 ("Confidential Supplemental Information") separately from the petition and must have one completed Confidential Document Cover Sheets (see attached form PB-4003) attached. This Confidential Supplemental Information form must be verified (Probate Code § 1021).

(Effective 7/1/2012)

T. TEMPORARY CONSERVATORSHIPS**(1) PETITION FOR APPOINTMENT**

The petition for appointment of a temporary conservator may be filed only with or after the filing of a petition for appointment of a permanent conservator. The petition must state facts establishing the urgency requiring the appointment of a temporary conservator. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed conservatee will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause.

(Effective 1/1/2009)

(2) IMMEDIATE NOTIFICATION OF COURT INVESTIGATOR

Petitioner or petitioner's attorney should contact the Court Investigator's Office at (408) 882-2761 as soon as possible when it appears that a temporary conservatorship may be requested in order that the Investigator can begin the investigation and report necessary for the appointment of a temporary conservator.

(Effective 1/1/2009)

(3) PRIOR REVIEW OF PETITION

All petitions for a temporary conservatorship must be presented to the Probate Examiner's office for review before presentation to the Court.

(4) NOTICE

Since a petition for temporary conservatorship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the 5-day-notice requirement. Petitioner must comply with the requirements of CRC 7.1062. If notice is dispensed with by the Court, the petition may be heard on an ex parte basis.

(Effective 7/1/2008)

(5) LETTERS OF TEMPORARY CONSERVATORSHIP

Letters of temporary conservatorship expire on the appointment of a general conservator. Letters of temporary conservatorship should be recorded in counties where conservatees possess real property. (See Probate Code §1875.) When the temporary conservator will come into possession of personal property of the conservatee, bond as provided in Local Probate Rule 11A (1) must be posted before temporary letters of conservatorship of the estate can be issued.

(Effective 1/1/2007)

(6) POWERS OF TEMPORARY CONSERVATOR

The temporary conservator has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary conservatorship. There is no provision in the law for granting exclusive medical powers under a temporary conservatorship, absent a hearing for a grant of powers under Probate Code sections 1880, et seq. A temporary conservator may also seek authorization to give consent for treatment under Probate Code section 2357. The court requires that there be a grant of exclusive medical powers under section 1880 for there to be a grant of powers under Probate Code 2356.5.

(Effective 7/26/2000)

(7) CHANGE OF RESIDENCE OF TEMPORARY CONSERVATEE

When the residence of a temporary conservatee is proposed to be changed, the hearing must be calendared for the first Tuesday afternoon conservatorship appointment calendar following the date of filing of the petition. A "Referral for Court Investigator - Conservatorship" form (attached form PB-4002) must be submitted with the notice of hearing and the original petition for review by the Court Investigator. See Probate Code section 2253.

(Effective 7/1/2012)

U. PRIVATE PROFESSIONAL CONSERVATORS**(1) APPOINTMENT OF PROFESSIONAL FIDUCIARY AS CONSERVATOR**

A person seeking appointment as a private professional conservator must be licensed as a professional fiduciary, as defined in Business & Professions Code §§ 6500 et seq. before the Superior Court can make such appointment. All pleadings filed by a professional fiduciary must include the fiduciary's license number as issued by the Professional Fiduciary Bureau.

(Effective 1/1/2009)

(2) DISCLOSURE OF FEE SCHEDULE

At the time a private professional conservator is nominated to serve as conservator, the petitioner must attach the private professional's fee schedule to the petition for appointment of conservator and must serve the fee schedule as part of the petition on all persons entitled to notice under Probate Code § 1822 and to the Court Investigator. If the Court appoints a private professional fiduciary who was not nominated in the petition as a temporary conservator, the private professional must attach his/her fee schedule to the order appointing temporary conservator at the time the order is filed with the court and must mail a copy of the fee schedule to all persons entitled to notice under Probate Code § 1822 and also to the Court Investigator

(Effective 1/1/2013)

The fee schedule shall not contain:

- (a) Additional compensation, either in terms of a percentage or a standard monthly charge, for undesignated miscellaneous overhead or administrative expenses, or “start-up fees;”

(Effective 1/1/2014)

- (b) Charges made to the conservatee’s estate for time spent in clarifying or explaining billing entries to the Court, for which minimal or incomplete information, in the judgment of the Court, was initially provided; or,

- (c) Increased hourly rates for conservatorship-related “litigation support.”

(Effective 1/1/2013)

- (d) Compensation in the form of a percentage of the sale price of a conservatee’s real property, either in lieu of, or in addition to, hourly charges for services performed in connection with such sale, or,

(Effective 1/1/2014)

- (e) Fees based upon a percentage of the valuation of the Conservatee’s estate which exceed the private professional fiduciary’s maximum hourly rate.

(Effective 1/1/2014)

(3) FILING OF ESTIMATED FEES; COMPLIANCE HEARING AND MONTHLY BILLING STATEMENTS

Within 60 days from the date of the appointment, the private professional conservator shall file with the Court a plan of estimated fees of the private professional conservator, his or her staff, and his or her counsel, to cover the first year of the conservatorship, which includes the conservatee’s anticipated annual income and expenses to the extent they can be ascertained, at that time and serve a copy of the plan of estimated fees, along with notification of the date and time of the review hearing, and the time in which to file objections or concerns as to the estimated fees, on all persons entitled to notice of the original petition under Probate Code § 1822, the Court Investigator, and any persons who have requested special notice.

The Court shall set a date not more than 94 calendar days after the appointment for a review hearing, at which time the Court will address any objections or concerns as to such estimated fees. If no written objections are received within 10 calendar days prior to the review hearing, no appearance is necessary. However, despite the lack of a timely written objection being received, should someone appear at the review hearing and make an objection, or if the Court has concerns of its own as to the reasonableness of the hourly rates charged for varying levels of service, the Court shall continue the review hearing and notify all parties accordingly. The plan of estimated fees is not binding upon the conservatee, his or her estate, the conservator and/or counsel. All conservator fees and attorney fees are subject to review and approval by the Court, pursuant to Probate Code § 2640 et seq., the standards for determining just and reasonable compensation at CRC 7.756, and the Court’s assessment of the extent of any “Cost-Benefit” analysis that was undertaken by the private professional prior to engaging in any activities on behalf of the conservatee.

(Effective 1/1/2015)

At the end of the first full calendar month following appointment and continuing at the end of each month thereafter, the private professional conservator shall mail a billing statement for that month itemizing all services provided to the conservatee, and all charges related thereto, to the conservatee (unless, in the opinion of the private professional conservator, receipt of such by the conservatee would be harmful to the conservatee’s state of mind) or his or her attorney, the conservatee’s spouse or domestic partner, his or her parents, his or her adult children, his or her siblings, the Court Investigator, and any persons who have requested special notice. (This monthly billing requirement is not imposed on those private professionals performing conservatee services pro bono, or for any month where that month’s billing for services does not exceed two times the private professional’s maximum hourly billing rate.) Such billing statements shall be clearly marked, “For Informational Purposes Only.” Alternatively, the private professional conservator can provide to such persons “secured” access to this information by means of computer or other electronic device. Failure to provide the monthly billing statements as required above may constitute a ground for the Court to deny approval of subsequent fee requests. All requests for approval of fees shall include a statement indicating whether the private professional conservator has complied with Local Probate Rule 11.U(3).

(Effective 1/1/2015)

If the following conditions are met:

- (a) There are no objections to the plan of estimated fees; or
- (b) If objections to such plan were, in the opinion of the Court, adequately addressed; and,
- (c) Objections as to the fee’s appropriateness are not made as to a monthly statement within 20 calendar days following that statement’s mailing, forty (40%) percent of the monthly statement is immediately payable by the conservatee’s estate to the private professional for said uncontested monthly billing statement without further petition at that time, other than the review by the Court upon the next succeeding account of the conservator, pursuant to Probate Code § 2643 (c), that such monthly “on account” payments were for services actually rendered, and were not unreasonable. Any failure to object within the 20 calendar day period shall not constitute a waiver of such objection, and the Court retains the authority to deny approval of any fees upon the next succeeding account. The payment of the balance of these fees are to be made by noticed petition pursuant to Probate Code § 2640, which petition shall, among other things, include a statement as to the current size and nature of the conservatee’s estate.

(Effective 1/1/2015)

(4) PRIVATE FIDUCIARY CONSERVATOR RATE GUIDELINES

In applying the non-exclusive standards for determining just and reasonable compensation set forth at CRC 7.756, and recognizing that CRC 7.756(c) provides that such standards are “not authority for a court to set an inflexible maximum or minimum

compensation or a maximum approved hourly rate for compensation,” the following periodically reviewed guideline rates are customarily allowed for private fiduciary conservator compensation:

(Effective 1/1/2014)

- (a) From \$115.00 to \$170.00 per hour for professional services;
- (b) Up to \$100.00 per hour for case management workers in the employment of the private fiduciary; and,
- (c) \$25.00 to \$55.00 per hour for routine, services rendered by the professional fiduciary or his or her staff (for example, office filing, collecting and opening mail, paying routine household bills, computer entry input, and when the conservatee is not accompanying the conservator, tending to the conservatee’s personal needs and grocery shopping.)

(Effective 1/1/2014)

In addition to periodic rate review the Court will consider requests for compensation rates greater than the guideline rates based upon all relevant factors presented in a detailed supporting declaration that can include, but are not limited to, special expertise applicable to the services provided, circumstances of the service, relationship to the conservatee, extreme family conflict dynamics, and financial and investment complexity and enhanced liability exposure.

(Effective 1/1/2014)

V. CONSERVATEES’ TRUSTS

- (1) When a conservator or some other person seeks an order under the doctrine of substituted judgment to create a trust that contains assets of the conservatee, the petition should provide detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust. In addition, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and periodic accountings to the Court. The proposed trust should be attached to the petition as an exhibit. At the time of filing of the trustee’s accounting, a “Referral for Court Investigator - Conservatorship” form (attached form PB-4002) must be submitted with the notice of hearing and the proposed trust for review by the Court Investigator. See also Local Probate Rules 9.A(1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

If the conservator of the estate is named trustee, the conservator may elect to treat the trust estate as part of the conservatorship estate for purposes of bond and accounting and shall not be required to post a separate bond as trustee. The trustee must file the trust, the court order approving establishment of the trust, and the trustee’s bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust may be filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (attached form PB-4003.)

(Effective 7/1/2012)

- (2) When a conservator or some other person seeks appointment of a successor trustee of the conservatee’s existing living trust, the court may require the successor trustee to post a bond, place the trust under court supervision, and provide accountings for the trust parallel to the accounting scheduled of the conservatorship. In such case, the trustee must file the trust, the court order approving the trust, and the bond, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the appointment of the successor trustee, as the case may be. The trust may be filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (Attachment form PB-4003.)

(Effective 7/1/2012)

W. NOTICE TO COURT INVESTIGATIONS UNIT OF SUBSTITUTED JUDGMENT PETITIONS

At the time of filing of a petition for substituted judgment, "Referral for Court Investigator - Conservatorship" (attached form PB-4002) must be submitted with the notice of hearing and the original petition for review by the Court Investigator.

(Effective 7/1/2012)

RULE 12 GUARDIANSHIPS

A. GUARDIAN OF MINOR’S ESTATE

(1) INVESTIGATION

The proposed guardian must complete and sign under penalty of perjury a “Referral for Court Investigator & Questionnaire – Guardianship” (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the “Referral for Court Investigator & Questionnaire – Guardianship” the proposed guardian must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513.

(Effective 1/1/2009)

(2) BOND REQUIRED

Bond will ordinarily be required for the first year for the guardian of a minor's estate even if a nomination of guardian has been signed waiving bond. The provisions of Local Probate Rules 5C through 5F apply to guardianships. The amount of the bond must include one year's income from all sources of income of the ward, any sums required under Probate Code § 2320(c), and the fair market value of real property for guardians authorized to sell or encumber such property pursuant to Probate Code § 2590

(Effective 7/1/2010)

(3) INDEPENDENT POWERS

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reason for the need for each power requested.

(Effective 1/1/2008)

(4) FILING OF INVENTORY AND APPRAISAL

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the guardian and on the attorney for the guardian.

(Effective 7/1/2012)

B. PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR'S PERSON

(1) INVESTIGATION

The proposed guardian must complete and sign under penalty of perjury a "Referral for Court Investigator & Questionnaire – Guardianship" (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the "Referral for Court Investigator & Questionnaire – Guardianship" the proposed guardian(s) must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513.

(Effective 1/1/2008)

(2) NOTICE

The following are the local addresses for notice according to Probate Code sections 1516 and 1542:

Program Manager, Emergency Response Services
Santa Clara County Social Services Agency
333 W. Julian Street
San Jose, California 95110

Social Services Agency
Department of Family and Children's Services
333 W. Julian Street
San Jose, California 95110
(Non-relative guardians only)

The California Department of Social Services
744 P Street
Sacramento, California 95814
(Non-relative guardians only)

(Effective 7/1/2002)

(3) MINOR'S FATHER UNKNOWN

If it is alleged that the minor's father is unknown, a photocopy of the minor's birth certificate should be attached to the affidavit or declaration in support of an order dispensing with notice. Use of the terms "withheld" on the birth certificate with reference to the father does not mean "unknown," and should be further explained in the allegation.

(4) REQUEST TO DISPENSE WITH NOTICE

If a party seeks to dispense with notice because a person cannot be located, the party may use local form Request to Dispense with Notice (form PB-4068) and comply with rule 7.52 of the California Rules of Court.

(Effective 7/1/2018)

(5) EX PARTE/EMERGENCY APPLICATIONS AND ORDERS

(a) ACTIONS NOT GOVERNED BY THIS RULE

This rule does not apply to ex parte requests for temporary guardianships, general guardianship, or termination of guardianships, as the processes for those actions are otherwise statutorily prescribed.

(b) NOTICE AND SUBMISSION OF EX PARTE APPLICATIONS

All applications for ex parte or emergency orders must be submitted to the Probate Court Document Examiner. An ex parte petition or application must contain sufficient facts to justify the orders requested, including an order shortening time, if appropriate.

Notice of the application and proposed order must be served on all parties 24 hours before presenting the ex parte petition to the court unless the court orders that notice may be dispensed. The petition and a proposed order must be presented to the Probate Examiner's office with a declaration (attached form PB-4075) regarding notice or why notice has not been given.

Any application seeking temporary orders without prior notice to all parties, including orders shortening time must include a sworn statement of facts showing good cause not to give notice. The moving party may not rely on the declaration filed in support of the application for temporary orders to establish good cause not to give notice. The statement of good cause not to give notice may be provided with a declaration (attached form PB-4075).

(c) PROPOSED ORDERS

Along with the application and declaration in support of ex parte application, attorneys or self-represented parties must also submit a proposed order reflecting the orders requested in the application.

(d) OPPOSITION TO EX PARTE APPLICATION

Attorneys or self-represented parties must serve on moving party and file with the Probate Document Examiner any written response to the ex parte application within 24 hours of the ex parte application's submission to the Court, unless the Court requests an expedited response.

C. COORDINATION OF CUSTODY AND GUARDIANSHIP MATTERS

If there is pending both an action regarding the custody of a minor child and an action for Guardianship of the Person or Person and Estate of the minor child under the Family Code, the cases should be coordinated for hearing purposes and assigned for hearing to the Guardianship APJ. At the earliest opportunity, the cases shall be linked in the case management system, so that the judicial officer hearing the matter is made aware of the existence of the other case or cases. Pursuant to CRC 5.154, the proposed guardian, temporary guardian, or guardian, may be joined into the Family Court action as a party.

(Effective 7/1/2012)

D. COORDINATION OF RESTRAINING ORDER AND GUARDIANSHIP MATTERS

If there is pending an application for restraining orders under the Domestic Violence Prevention Act or the Civil Harassment Prevention Act which involves a party to a pending Guardianship matter, the hearing on the restraining orders will be scheduled and heard by the Guardianship APJ. The initial restraining order request and any temporary restraining orders shall be filed at Family Court

(Effective 7/1/2010)

E. OBJECTION TO GUARDIANSHIP

Individuals objecting to a petition to establish a guardianship may use the local form entitled Objection to Guardianship (attached form PB-4043).

(Effective 7/1/2012)

F. DUTIES OF GUARDIAN

To assure that their duties and obligations are understood, each guardian must file with the Court, before letters of guardianship are issued, the Judicial Council form entitled "Duties of Guardian." (Form GC-248). The form may be signed and submitted prior to the date set for hearing.

(Effective 1/1/2008)

G. ATTENDANCE AT THE HEARING

The proposed guardian, the petitioner, and the petitioner's attorney must attend the appointment hearing. The guardian will receive instructions concerning the guardian's duties immediately following the hearing. To document the orders made at the Guardianship Hearing, the parties may use the local form entitled Findings and Order After Hearing (attached form PB-4055).

(Effective 7/26/2000)

H. CONTESTED GUARDIANSHIP**(1) FAMILY GROUP CONFERENCES/MEDIATION**

If there is a contested Guardianship of the Person or a contested Petition for Visitation in a Guardianship matter, the Court may order the parties to participate in mediation or one or more Family Group Conferences through Family Court Services (FCS) or a private mental health professional agreed to by all parties. The referral to a Family Group Conference will usually be made at the first hearing where any party objects to the guardianship or a request for visitation. Mediation is confidential, whereas Family Group Conferences are not confidential. All parties and their counsel may participate in the conferences, along with counsel for the minor(s). The minor(s) may be required to attend any Family Group Conferences at the discretion of the person conducting the conference or as ordered by the Court.

(2) EMERGENCY SCREENINGS

In any case in which an emergency exists, the Court may order a staff member of FCS to conduct an "emergency screening" (a preliminary and limited evaluation). The purpose of the screening shall be to provide the Court with recommendations regarding the temporary custody, visitation, and related conditions for the minor children who are the subject of the guardianship.

When an emergency screening is ordered, the Order shall be made on a Probate Order for Emergency Screening and the Emergency Screening Instructions (attached form PB-4046) shall be served on all parties ordered to the emergency screening.

(Effective 1/1/2011)

Emergency screenings shall be governed by, and conducted according to, Local Family Rules 2C(6) and 2D(1) through 2D(7).

(Effective 1/1/2017)

(3) Evaluations

The Court may, in its discretion, order an evaluation by FCS regarding issues relating to a contested guardianship. Such an evaluation shall be a supplement to the report of the Court Investigator. Evaluations shall be governed by, and conducted according to, Local Family Rules 2C(3) through 2C(5) and 2D(1) through 2D(7).

(4) EX PARTE APPLICATION TO BE RELIEVED AS COUNSEL FOR MINOR CHILD

Appointed counsel may apply via an ex parte application and order to be relieved as the counsel for minor child. The attorney for the minor(s) shall serve the parties or attorneys for the parties the Ex Parte Application and Order to be Relieved as Counsel for Minor Child (attached form PB-4073) along with a blank Response to Application to be Relieved as Counsel for Minor Child (attached form PB-4074). Parties or attorneys for the parties will have 21 calendar days from date of the application to respond to

the request. Responses shall be served on the counsel for the minor child and all other parties. If no response is received, the court may grant the request if good cause exists.

If a response is received and the party or counsel for a party objects to the request to be relieved, a Status Conference may be set by the court to consider the objection.

I. CHANGE OF RESIDENCE OF GUARDIAN OR WARD

When the address of the ward will be changed, the Pre-move Notice of Proposed Change of Personal Residence of Conservatee or Ward (Judicial Council form GC-079), and also the Post-Move Notice of Change of Residence of Conservatee or Ward (Judicial Council form GC-080) must be filed with the Court and a copy mailed to the Court Investigator. This is in addition to the Notice requirements of Probate Code § 2352 and CRC 7.1013.

When the address of the guardian will be changed, the Notification of Change of Address of Conservator/Guardian (attached form PB4047) must be filed with the Court and a copy mailed to the Court Investigator. *(Effective 1/1/2011)*

J. USE OF WARD'S ASSETS FOR SUPPORT

If a ward has a living parent or receives or is entitled to support from another source, prior Court approval must be obtained before using guardianship assets for the ward's support, maintenance, or education. (See Probate Code section 2422.) The petition must set forth the financial inability of the parent or parents or other circumstances that would justify use of the guardianship assets. Such request for Court approval may be included in the petition for appointment of guardian. An order granting such petition should be for a limited period of time, usually not in excess of six months or for a specific and limited purpose.

(Effective 7/26/2000)

K. ACCOUNTINGS

(1) REFERRAL TO COURT INVESTIGATOR

At the time of filing of the guardian's accounting, a "Referral for Court Investigator & Questionnaire – Guardianship" form (attached form PB 4005) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Local Probate Rule 9A. (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

(2) ACCOUNTING REQUIRED AT TERMINATION UNLESS WAIVED; ACCOUNTING COMPLIANCE DATES

At termination of a guardianship of the estate, an accounting as required by CRC 7.1004(c), must be filed unless waived by a ward who has reached majority pursuant to Probate Code § 2627 (a). See CRC 7.1007(a); see also Local Probate Rule 9.A. (2) (form of accounting and accounting compliance dates) and Local Probate Rule 11.V (fees for a private professional fiduciary)

(Effective 7/1/2013)

L. TERMINATION OF GUARDIANSHIP OF THE PERSON

At the time of filing of a petition to terminate a guardianship a "Referral for Court Investigator & Questionnaire – Guardianship" form (Attachment PB-4005) must be submitted with the notice of hearing and the original petition for review by the Court Investigator. Individuals objecting to a Petition to Terminate Guardianship may use the local form entitled Objection to Petition to Terminate Guardianship (attached form PB-4039).

(Effective 7/1/2012)

M. TEMPORARY GUARDIANSHIPS

(1) PETITION FOR APPOINTMENT

The petition for appointment of a temporary guardian must be filed with or after the filing of a petition for appointment of a general guardian. The petition must state facts establishing the urgency requiring the appointment of a temporary guardian. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed ward will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause.

(Effective 1/1/2017)

(2) PRIOR REVIEW OF PETITION

All petitions for a temporary guardianship must be presented to the Probate Examiner's office for review before presentation to the Court.

(Effective 7/1/2002)

(3) NOTICE

Since a petition for temporary guardianship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the five day notice requirement. Petitioner must comply with the requirements of CRC 7.1012. If notice is dispensed with by the Court, the petition may be heard on an ex parte basis. Persons obtaining an ex parte order must reserve a date for reconsideration within 30 days, pursuant to Probate Code section 2250(d).

(Effective 7/1/2008)

(4) LETTERS OF TEMPORARY GUARDIANSHIP

Letters of temporary guardianship expire on the appointment of a general guardian.

(Effective 7/26/2000)

(5) POWERS OF TEMPORARY GUARDIAN

The temporary guardian has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary guardianship.

(Effective 7/26/2000)

N. REMOVAL OF GUARDIAN

Individuals requesting removal of a guardian may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Guardian (attached form PB-4041). Anyone objecting to a petition to remove the guardian may use the local form entitled Objection to Petition to Remove Guardian (attached form PB-4036).

(Effective 1/1/2008)

O. VISITATION

Individuals requesting visitation orders in guardianships may petition the Court for an order or visitation. The petitioner may use the local form titled "Probate Petition for Visitation (attached form PB-4013), and the local form titled "Visitation Order (Probate)" (attached form PB-4011) with Judicial Council Form FL-341 titled "Child Custody and Visitation Order Attachment."

(Effective 7/1/2006)

P. FIXING RESIDENCE OF A WARD OUTSIDE CALIFORNIA

The residence of a ward who is under a guardianship of the person and who is a California resident may be fixed outside of California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the ward must be returned to California within four months unless a guardianship proceeding (or its equivalent) is commenced in the place of the new residence. If a ward is not returned to California, a declaration must be filed showing proof of the establishment of the guardianship (or its equivalent) in the new jurisdiction. See Probate Code §2352. Petitioner must submit with the local form entitled "Referral for Court Investigator & Questionnaire - Guardianship" (attached PB-4005) the notice of hearing and the original petition to fix the residence of the ward outside of California for review by the Court Investigator.

(Effective 7/1/2012)

RULE 13 GUARDIAN AD LITEM AND COMPROMISES OF CLAIMS OF MINORS AND PERSONS WITH A DISABILITY**A. GUARDIAN AD LITEM**

A guardian ad litem has no authority to accept funds on behalf of a minor or person with a disability.

(Effective 1/1/2011)

B. CONTENTS OF PETITION

The petition to compromise a minor's claim must contain, in addition to those matters required by statute and by CRC Rules 7.950 to 7.955, the names and addresses of the minor's parents.

(Effective 1/1/2004)

Where the minor's settlement is part of a larger settlement, the petition must state in detail the factual basis for the proposed allocation to the minor or the person with a disability.

(Effective 7/1/2005)

For personal injury claims of minors and persons with a disability, unless waived by the Court, the petition must have attached a current medical report (prepared within 4 weeks of the date of the petition) that gives a diagnosis and a prognosis of the condition of the individual. The report must be prepared by a licensed physician who has treated the minor or person with a disability. It is not permissible to substitute the medical records of the minor or the person with a disability for this report.

(Effective 7/1/2005)

C. PRESENCE OF MINOR OR PERSON WITH A DISABILITY

Unless excused by the Court, the minor or person with a disability, the petitioner, and at least one of the minor's parents or guardians must be present at the hearing.

(Effective 7/1/2005)

D. EX PARTE PETITIONS

In certain circumstances, in the Court's sole discretion, petitions may be presented ex parte. These cases are only those in which the net settlement to the minor or person with a disability, after deduction of attorney fees and costs, is less than \$ 5,000.

(Effective 7/1/2005)

E. MEDICAL MALPRACTICE MATTERS

Medical malpractice cases may justify a higher attorney fee than that commonly awarded in compromises of claims of minors or persons with a disability. The Court will, in an appropriate case, award the maximum fee permissible under Business and Professions Code section 6146. The fee contract must be disclosed to the Court upon request.

(Effective 7/1/2005)

F. DISTRIBUTION

Upon approval of the petition to compromise, the judge must direct whether the funds are to be paid to a parent, to a blocked account, to a guardian or conservator of the estate, or to some other appropriate fiduciary. When deposit in a blocked account is ordered, parties must use the Judicial Council forms referred to in Local Probate Rule 5 above.

(Effective 1/1/2017)

It is the responsibility of the fiduciary to file a Receipt for the blocked account, signed by an officer of the financial institution accepting the deposit, within 15 days of the date of deposit. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court within 45 days of the order, stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

G. FUNDS IN BLOCKED ACCOUNT IN NON-GUARDIANSHIP CASES

A request for withdrawal of funds for the minor's support, maintenance, or education may be made ex parte if accompanied by a sufficient showing of need. However, where the minor has a living parent or the minor receives or is entitled to support from another source, the petition must contain the allegations referred to in Local Probate Rule 12J above. In such cases the Court may require that the matter be set for noticed hearing. A petition for withdrawal of funds must be made on Judicial Council form "Petition For Withdrawal of Funds From Blocked Account (form number MC 357), and the petitioner must submit for the Court's signature the Judicial Council form "Order For Withdrawal of Funds From Blocked Account" (form number MC 358).

Where there is no prior Court record of the minor's date of birth, a petition to release funds from the blocked account upon the minor's majority must be accompanied with a copy of the minor's birth certificate.

H. TRANSFER OF ASSETS OF A MINOR OR A PERSON WITH A DISABILITY TO A TRUST UNDER PROBATE CODE § 3600 ET.SEQ.

When it is proposed to put the assets of a minor or person with a disability in a trust, under Probate Code § 3600 et. seq., including a special needs trust, the petition should provide detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust. In addition, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and periodic accountings to the Court. The proposed trust should be attached to the petition as an exhibit. If the beneficiary of the trust is conserved, at the time of filing of the trustee's accounting, a "Referral for Court Investigator - Conservatorship" form (attached PB-4002) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Rules 9A (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2015)

The trustee must file the trust, the court order approving establishment of the trust, and the trustee's bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust may be filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (attached form PB4003.)

(Effective 1/1/2017)

RULE 14 COMPENSATION OF REFEREES

The compensation of the referee must be subject to Probate Court authorization or approval.

RULE 15 MINOR'S EMANCIPATION

(Effective 7/1/2002)

A. INVESTIGATION

An investigation into the circumstances surrounding the minor's request for emancipation will be conducted by the Court Investigator, who will prepare a written report for the Court.

B. REPRESENTATION

Where the minor is unrepresented, he/she must have the petition and accompanying documents reviewed by an attorney. Written verification that the minor has met with an attorney must be submitted to the Court when the petition is filed.

(Effective 7/1/2002)

C. STATEMENT

The minor is to submit to the Court, with his/her petition, a personal statement, under penalty of perjury, specifying in detail the reasons for the emancipation request and describing the circumstances giving rise to the request.

(Effective 7/1/2002)

D. APPEARANCE

The minor must attend the hearing on the petition, and anyone who desires to be heard on the emancipation petition may attend. The hearing is to be non-adversarial.

(Effective 7/1/2002)

RULE 16 TRUSTS**A. TRUSTEE FEES**

As to trusts that are within the Court's jurisdiction, if the will or trust instrument contains provisions for a trustee's compensation, the trustee shall receive compensation as provided therein. However, on a proper showing, the Court may allow a greater compensation when:

- (1) the trustee's services are substantially greater than those contemplated by the testator or settlor at the time the will was signed or the trust was created;
- (2) the compensation provided in the will or trust is so unreasonably low that a competent trustee would not agree to administer the trust; or
- (3) there are extraordinary circumstances.

If the trustee's compensation is designated in the will or trust instrument as being "reasonable," with no further guidance, the trustee shall ordinarily be compensated on a quantum meruit basis according to work actually performed, and after the Court's consideration of the factors set forth in CRC 7.776, together with the provisions found at Local Probate Rule 11V(4) in the event that the trustee is a private professional fiduciary.

(Effective 7/1/2013)

B. REMOVAL OF TRUSTEE

Individuals requesting removal of a trustee may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Trustee (attached form PB-4034). Anyone objecting to a petition to remove the trustee may use the local form entitled Objection to Petition to Remove Trustee (attached form PB-4038).

(Effective 1/1/2008)

RULE 17 LANTERMAN PETRIS SHORT (LPS) ACT CONSERVATORSHIP ACCOUNTINGS

A. ACCOUNTINGS – TERMINATION OF ONE-YEAR PRIVATE LPS CONSERVATORSHIPS OF THE PERSON AND ESTATE

(Effective 1/1/2012)

- (1) At the end of the one-year LPS conservatorship of the estate, where the conservator is a private party and not the Public Guardian, an Order Re: Accounting directing compliance with the statutory accounting requirements, with accompanying “Declaration For Waiver Of Accounting Per Probate Code § 2628 (a)” and blank accounting forms indicating a 60 day return period, shall be mailed by the Court to the conservator’s last known address.

(Effective 1/1/2012)

- a. If the Declaration for Waiver of Accounting is executed, the Court shall prepare, execute, and file a “Decree Terminating Conservatorship of the Person and Estate, Discharging Conservator and Waiver of Accounting.”
- b. If completed accounting forms are returned and are viewed as satisfactory, the Court shall prepare, execute, and file a “Decree Terminating Conservatorship of The Person and Estate, Discharging Conservator and Settling the Final Accounting.”
- c. If there is no response from the conservator, the Court shall issue and set an Order to Show Cause re Contempt hearing at least 30 days thereafter.

RULE 18 PETITION FOR WRIT OF HABEAS CORPUS RE QUARANTINE DETENTION

Whenever a Petition for Ex Parte Writ of Habeas Corpus Re: Quarantine Detention is brought, the Petitioner shall use the local form entitled "Petition for Writ of Habeas Corpus Re: Quarantine Detention " (attached form PB-4052). The initial Petition shall be served on the County of Santa Clara, Office of the County Counsel. The Petition shall be filed in the Probate Clerk’s Office by one of the following methods: personal delivery, direct fax or email. If the Petition is filed by fax, it shall be in accordance with CRC 2.304 and faxed to (408) 882-2694. If the Petition is filed by email, it shall be scanned, attached as a pdf file, and emailed to quarantinewrit@scscourt.org. Any response to a Petition for Writ must be filed within two court days from the date of service of the initial Petition. The judicial officer reviewing the Ex Parte Writ and any filed response shall complete the local form “Order for Writ of Habeas Corpus Re: Quarantine Detention” (attached form PB-4053). If the judicial officer grants the Petition for Writ and sets the matter for hearing, the Order shall direct the Clerk of the Court to issue said Writ indicating time and place for the court hearing. The hearing must be set no later than four days from the Petition filing date. The Clerk of the Court shall use the local form “Writ of Habeas Corpus Re: Quarantine Detention” (attached form PB-4054). The local form “Findings and Order after Hearing Re: Quarantine Detention (attached form PB-4055) shall be completed and submitted to the Court for final disposition of the case after the hearing

(Effective 7/1/2011)

RULE 19 ATTORNEY FEE DISPUTES

The following process shall govern disputes as to attorney fees:

- A.** Parties to attorney fee disputes shall meet-and-confer at the outset of the dispute.
- B.** Parties ordered to meet-and-confer shall attempt to identify factual and legal issues that are undisputed and subject to possible stipulation; the material factual and legal issues of dispute; and, the likelihood of the dispute being resolved through settlement or alternative dispute resolution.
- C.** Attorney fee disputes will generally be resolved on the pleadings and declarations.
- D.** Although encouraged to pursue informal discovery, parties to attorney fee disputes are not entitled to formal discovery or an evidentiary hearing in the absence of a showing of good cause.
- E.** Formal written settlement offers may be factored into the Court’s determination of whether attorney fees incurred after a formal settlement offer were reasonably expended.
- F.** Attorney fees expended in support of a fee petition may be adjusted downward or rejected when the fees awarded by the Court are substantially less than the amount originally requested.

RULE 20 PRIVATELY RETAINED COURT REPORTERS

A. GENERAL

(Effective 1/1/2018)

Refer to Rule 7 of the General Court and Administration Rules.

(Effective 1/1/2018)