

PROBATE LOCAL RULES (CHAPTER 17) (PROPOSED)

Blue indicates source of local rule, i.e., new rule or former local rule number.

Local Rule 1700 is amended to read:

1700 SCOPE OF RULES

Except where further limited herein, the rules of this chapter apply to, and only to, every action and proceeding to which the Probate Rules of the California Rules of Court apply. (New)

Local Rules 1701 through 1714 are repealed.

The following rules are enacted:

1720 PROCEDURAL RULES

1721 HEARINGS

(a) [Filing Location] All cases filed pursuant to the Probate Code shall be filed in the appropriate geographic division as designated by Local Rule 203 and the appropriate Probate Code sections. Each petition filed pursuant to the Probate Code must adequately identify the basis for venue.

(New)

(b) [Appearance Requirements] Court appearances are required at all hearings unless the matter has been recommended for approval or appearance is otherwise excused in the examination notes/ tentative ruling. When an appearance is required, attorneys or unrepresented parties must appear in person or by telephone, pursuant to CRC 3.670 and Local Rule 1005. Failure to appear as required may result in sanctions under Local Rule 102.

(New)

(c) [Review of Files Prior to Hearing]

(1) Probate matters will be examined prior to the hearing. Examination notes are ordinarily posted on the court's website (www.sbcourts.org/os/tr/) as much in advance of the scheduled hearing date as feasible, and may appear five (5) or more court days before the hearing. It is the party's responsibility to check the website regularly prior to the date of the hearing.

(2) If the matter is unopposed and recommended for approval no appearance will be necessary.

(A) If the matter is opposed or not recommended for approval, the examination notes will ordinarily identify the defects or issues to be addressed at the hearing. The court may require appearances at the scheduled hearing or may continue the hearing to a later date; appearances are required unless otherwise specified.

(B) Counsel may rectify the deficiencies by filing verified supplements and/or amendments, provided appropriate notices are given as required by statute or rule. Supplements and corrections processed within two (2) court days prior to the hearing will not be reflected in the posted notes, and such matters may be continued to another date to allow review. However, the Court, in its discretion, may consider such late-filed supplements/corrections. Parties submitting documents after the deadline must appear at the hearing.

(Former 1701(b))

(d) **[Objections to Pre-Approved Matters]** At the time scheduled for hearing, all cases on the calendar will be called. If an objection is made when a case is called, the court will schedule a hearing on a future date to allow for the filing of written objections. If no objections are made when a case is called, or if written objections are not on file at the time of the scheduled hearing, the tentative ruling will be deemed the final order.

(Former 1701(c))

1722 CONTINUANCES

(a) **[Continuance of Nontrial Matters]** Hearings other than trials or evidentiary hearings may be continued subject to the following:

(1) In uncontested matters, noticed hearings may be continued by motion, ex parte application, or written request. In contested matters, noticed hearings may be continued by motion, ex parte application, or a written stipulation from all affected parties. Such requests or stipulations must be filed at least three (3) court days before the hearing date and served on all persons entitled to notice of the hearing. The motion, application, request, or stipulation must be accompanied by a proposed order.

(2) The Court will rule on the request or accept the stipulation at the time of hearing or earlier. Parties should consult the court's examination notes (see Local Rule 1721(c)) to ascertain if appearance is required at the hearing.

(3) Requested hearing dates will be considered, but a different date may be set depending on availability. If a hearing is continued, the requesting party must serve notice of the continued hearing date unless otherwise ordered by the Court. Failure to serve notice as required may result in sanctions under Local Rule 102.

(4) Where notice of the scheduled hearing requires publication and publication has been completed, the hearing will take place as scheduled and the Court will address the request for continuance at the hearing.

(b) [Continuance of Trials or Evidentiary Hearings] A trial or evidentiary hearing may be continued for good cause only by order of the court. If all parties waive notice, an application for continuance may be presented ex parte. The application must be made at the earliest possible time and in no event less than one week prior to trial or the hearing. A party's need for additional time to prepare for trial or to discuss settlement does not constitute good cause.

(New)

1723 EX PARTE PROCEDURES

Ex Parte Requests in probate are requests for court orders without providing the full notice required for a petition or motion under the Probate Code. As herein defined, Ex Parte Requests are "With Appearance" or "Without Appearance."

(a) [Ex Parte Request Without Appearance] Ex Parte Requests "Without Appearance" are for matters that are uncontested, routine, and are not subject to specific noticing rules in the Probate Code.

(1) Ex Parte Requests Without Appearance include, but are not limited to:

(A) Ex Parte Petition for Final Discharge;

(B) Ex Parte Petition for Appointment of Guardian Ad Litem-Probate;

(C) Ex Parte Application for Order to Increase or Decrease Bond;

(D) Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person with a Disability; and

(E) Other requests which have been denominated as appropriate for ex parte treatment by the associated Judicial Council form.

(2) Ex Parte Requests Without Appearance are not set for a hearing and are considered by the Court without an appearance by parties. The assigned judge will either sign the order or set the matter for hearing, as appropriate.

(3) An Ex Parte Request Without Appearance must be e-filed where mandatory under Local Rule 1012. Applications that are not required to be e-filed under Local Rule 1012 must be filed in the Clerk's office of the appropriate court division where the case is pending in order to assure that the papers are available to the Court for the hearing.

(4) Except as otherwise provided in these rules, an Ex Parte Request Without Appearance need not comply with CRC 3.1200 et seq.

(b) [Ex Parte Request With Appearance] All Ex Parte Requests other than those set forth in subdivision (a) are Ex Parte Requests “With Appearance.” These matters are often contested.

(1) Except as provided in subdivision (b)(2) of this rule, Ex Parte Requests With Appearance shall be set and heard in the same manner as an ex parte application in a civil action and shall comply with CRC rules 3.1200 through 3.1207 and Local Rule 1009.

(2) If a matter is filed as an Ex Parte Request With Appearance and the court determines that it may be resolved without an appearance, the court may resolve the request without the necessity of an appearance providing appropriate notice to the requesting party.

(c) [Ex Parte Application for Appointment as Special Administrator] A party seeking appointment of as special administrator by ex parte application shall comply with the provisions of this section for an Ex Parte Request, subject to the following:

(1) If the petition is uncontested, a party seeking ex parte appointment of special administrator without a hearing must include “Without Hearing” in the caption box titled “Hearing Date and Time” in the Petition for Probate (Judicial Council form DE-111).

(2) If the petition is contested, the hearing date and time confirmed with the court as available must be placed in the appropriate caption box.

(3) The petition may not be combined with a petition for the appointment of a general personal representative. A separate Judicial Council form must be used for a petition for special letters of administration.

(New)

1724 PROBATE ORDERS

(a) [Order Prescribing or Dispensing With Notice] Unless otherwise ordered by the court, an order prescribing or dispensing with notice will be considered at the time the petition is heard. A request for an order dispensing with notice must be accompanied by a declaration of due diligence. (See CRC 7.52; Local Court Form SC-6014.) (Former 1711(d))

(b) [Proposed Probate Orders] Proposed orders or judgments shall be submitted on or before noon at least five court days prior to the hearing. Failure to submit a timely proposed order may delay the hearing or entry of the order. (Former 1701(d))

1725 RELATED CASES

Each party is under a continuing obligation pursuant to CRC 3.300 to serve and file a Notice of Related Case whenever it appears that two or more petitions with different case numbers have been filed with reference to the same decedent, conservatee, minor, or trust. The court may, on its own motion, relate or consolidate such matters. (New)

1730 GENERAL PROVISIONS

1731 PETITION FOR INSTRUCTIONS

A Petition for Instructions is limited to those matters for which no other procedure is provided. The Petition for Instructions should set forth the matter on which the petitioner desires instructions in precise detail. If the petitioner is taking a position on the issue, the petition shall set forth the position as well as the legal basis for such position. The petition shall be accompanied by a proposed Order of Instructions which sets forth the instructions in clear and explicit language. (Former 1711(b), corrected)

1732 OVERHEAD COSTS

(a) The following costs advanced may be reimbursed to the attorney or fiduciary without prior court permission:

- (1)** Fees charged by the Clerk of the Court;
- (2)** Newspaper publication fee;
- (3)** Surety bond premiums;
- (4)** Probate referee fees; and
- (5)** Court investigator's fees.

Any fees reimbursed without prior court order are nevertheless subject to review for reasonableness at the next account.

(b) The following expenses are considered by the court to be a business expense and are not ordinarily reimbursable costs or fees:

- (1)** Photocopy expenses;
- (2)** Telephone charges;
- (3)** Computer research fees;
- (4)** Clerical services;
- (5)** Travel to and from court; and
- (6)** Communication with the probate examiner and/or attorney. (New)

1733 SALES

- (a) **[Broker's Commissions on Real Property Sales]** The court will not approve a real estate commission in excess of 6% except in unusual cases where a larger commission is justified because of exceptional circumstances. (Former 1706(b))
- (b) **[Appearance by Attorney for Sales Confirmation]** In hearing petitions for confirmation of sale of real property and for sale of personal property where bidding is authorized, the court ordinarily will not proceed with confirmation of the sale in the absence of the attorney of record. (Former 1706(d))
- (c) **[Increased Bid Forms]** When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" form (local court form number (SC-6004)) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective. (Former 1706(h))

1734 PROBATE REFEREES

- (a) **[Appointment]** The probate referee is selected on a rotational basis. The name of the appointed referee shall be added by the clerk on the Order for Probate (DE-140), Order Appointing Guardian (GC-240) or Order Appointing Probate Conservator (GC-340). If the referee's name is not on the order, the appointment of a probate referee may be accomplished by ex-parte application. (See Local Court form SC-6000 Application and Order Appointing Probate Referee.) (New)
- (b) **[Preparation of Inventory and Appraisal]** The California Probate Referee's Association has published the "Guide to Using Probate Referees," which may be consulted at probatereferees.net. Although not an official court publication, this pamphlet is a good reference. (Former 1704(b))

1735 FUNDS DISBURSED TO MINORS

- (a) **[Policy]** Absent a showing of good cause, it is the policy of the Court to order all funds disbursed to a minor be deposited into a blocked account. The fact that a parent is appointed as guardian of the estate is not ordinarily good cause for waiving this policy. (Former 1712(e)(1))
- (b) **[Receipt from Institution]** When the Court orders funds to be deposited into a blocked account, the deposit must be acknowledged by Judicial Council form

“Receipt and Acknowledgement of Order for the Deposit of Money Into Blocked Account” (MC-356). This form must be signed by an authorized signatory of the institution into which the funds were deposited. The Court will set a hearing to review the filed Receipt and Acknowledgement. Appearance may not be required at the review hearing if the Receipt has been filed. (Former 1712(e)(2))

(c) [Accounting for Blocked Accounts] If funds are maintained in a blocked account in a guardianship proceeding, the guardian is not excused from submitting a timely accounting. However, the Court may accept proof of continued deposits, such as submission of all original account statements during the period of accounting, instead of the statutory accounting schedules. (Former 1712(e)(3))

(d) [Support Obligation of Parents] Minor’s funds may not be used for the ordinary expenses of supporting a minor where there is a parent living who has the obligation to support the minor pursuant to the Family Code. In all cases, Court approval must be obtained prior to the expenditure of funds for support of a minor. (Former 1712(g))

(e) [Petition for Authority to Expend Funds for Support from Non-Blocked Account] If the minor’s funds are not maintained in a blocked account and the order disbursing the funds does not otherwise authorize an expenditure, a Petition for Authority to Expend Funds for Support may be submitted.

(1) Such requests must be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. If the request is for multiple items, each item must be listed separately, with its cost.

(2) Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor.

(3) Requests to pay for medical or dental care, including orthodontia, should include a declaration from the guardian explaining why the expense is not covered by insurance.

(Former 1712(g)(1).)

(f) [Petition for Withdrawal of Funds from Blocked Account] If the funds are maintained in a blocked account, a Petition for Withdrawal of Funds from Blocked Account (Judicial Council MC-357) may be submitted. The petition must be calendared and should not be submitted ex parte. Petitioner must use attachments to supply the information described in the above paragraph that is not otherwise called for on the Judicial Council form. (Former 1712(g)(2).)

1740 ACCOUNTS

1741 COURT INVESTIGATOR'S ASSESSMENT

In cases involving a court investigation, a petition for approval of an account must state the amount of court investigator's assessments that have been paid and any amount due and owing. A receipt for payment must be filed, unless the fiduciary has obtained an order deferring or waiving payment of the assessment. (New)

1742 REPORTING BONDS IN ACCOUNTING, INVENTORY AND APPRAISAL

(a) [Reporting Sufficiency of Bond in Accounting] Sufficiency of the bond must be addressed in all interim accountings. The calculation for the reasonable amount for cost of recovery to collect on the bond must be included in the report as provided in CRC 7.207. The petition must also contain an allegation as to the date the bond was last renewed and when the next premium is due. (Former 1712(f)(6))

(b) [Increase or Decrease of Bond] If required, upon filing the Inventory and Appraisal, the personal representative or the attorney for the estate shall apply to the court for an increase or reduction in the amount of the bond as required by California Rules of Court, rule 7.204. (Former 1704(c))

1743 DOCUMENTS SUPPORTING ACCOUNT

(a) [Scope of Rule] This rule applies to all original documents required to be submitted by a fiduciary under Probate Code section 2620 in support of an accounting, including financial account statements, closing escrow statements, and residential care facility or long-term care facility bills.

(b) [Electronic Original Documents] All original documents required to be submitted by Probate Code section 2620 that are available only as electronic documents shall be electronically filed as provided in Local Rule 1012.

(1) An "electronic" document is either (i) a document received in electronic form and viewable using commonly available software (for example, a document in pdf form), or (ii) a document generated by the fiduciary that accurately reflects electronically stored information made available to the fiduciary (for example, a printout of an account statement from a financial institution where the financial institution transmits only a link to the account to the fiduciary showing that the statement is available electronically). All documents other than electronic documents are "non-electronic" documents.

(2) The fiduciary must affirm under penalty of perjury that all of the original documents so filed were received from, or printed from the official website of, the financial institution or other source in electronic form without alteration.

(3) That affirmation must be contained in a separate declaration filed with the account statements. The fiduciary must retain all original documents until the order approving the final account is final.

(c) **[Non-Electronic Original Documents]** All original documents required to be submitted by Probate Code section 2620 that are non-electronic documents shall be filed electronically as copies as provided in Local Rule 1012 and also lodged in their form as original non-electronic documents pursuant to CRC 2.252(e).

(1) The party submitting the non-electronic original documents must include a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The non-electronic original documents will be returned to the submitting party after examination.

(2) The Court will retain the documents in electronic form as part of the Court's records. The fiduciary must retain all original documents until the order approving the final account is final.

(d) **[Additional Submissions]** The Court in its discretion may at any time additionally require:

(1) that the fiduciary produce original documents for inspection by the court, whether or not such original documents have previously been filed, lodged, or returned;

(2) that the fiduciary provide additional original documents supporting the matter under consideration by the Court; or,

(3) that the fiduciary provide additional authentication that the documents accurately reflect the data of their source, including without limitation, a declaration from an appropriate custodian of the source information or production of those documents directly to the court.

(New)

1744 RECONCILIATION OF FINANCIAL STATEMENTS

Where a closing balance reported in the "Property on Hand" schedule (at end of the accounting period) and/or an Inventory and Appraisal (for first accounting) does not agree with the balance reported in its corresponding financial statement, the account must include a schedule with a detailed reconciliation. (New)

1750 DECEDENT'S ESTATES

1751 STATUTORY DEADLINES FOR DECEDENT'S ESTATES

It is the practice of this Court to enforce Probate Code time limitations for the filing of inventory and appraisals, accountings, petitions for distribution and other required acts by the issuance of orders to show cause re suspension of powers and for imposition of monetary sanctions, as against either or both the attorney and the personal representative. (New)

1752 APPOINTMENT OF PERSONAL REPRESENTATIVES

(a) [Notice of Petition] The petitioner or petitioner's attorney shall be responsible for publication of notice where required and where notice by mail is required to be given, petitioner or petitioner's attorney shall give the notice and file a proper proof of service. If there is no one entitled to notice, a statement to that effect shall appear on the proof of service of the Notice of Petition to Administer Estate (DE-121). (Former 1702(b))

(b) [Submission of Duties of Personal Representative] If a bond is not required, the proposed personal representative shall submit the form (DE-147) prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the form (DE-147) prior to the hearing or with the bond after the hearing. (Former 1702(d))

(c) [Submission of Letters of Personal Representative] If a bond is not required, the proposed personal representative shall take the prescribed oath of office and sign, date, and submit the Letters prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the executed Letters prior to the hearing or with the bond after the hearing. (Former 1702(e))

(d) [Declination to Serve / Consent to Serve]

(1) If a person nominated as personal representative in the will declines to act, a signed declination must be filed prior to the hearing on the petition for probate unless evidence is produced that the nominated person is not competent pursuant to Probate Code section 8402, refuses to act, or cannot be located. Similarly, a written declination must be filed by or on behalf of an individual who is entitled to priority for issuance of Letters of administration but does not desire to act, or evidence must be produced that the person with priority is not competent under Probate Code section 8402 or refuses to act. (Former 1702(f))

(2) Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal

representative must be filed for each such proposed personal representative.
(Former 1702(f))

(e) [Will Submitted for Safekeeping] The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping. If the will was previously lodged for safekeeping, it is petitioner's responsibility to notify the clerk upon filing the petition for probate that the will was previously lodged.
(Former 1702(g))

1753 FEES OF PERSONAL REPRESENTATIVES

(a) [Allowance on Account of Fees] Allowances on account of statutory fees will be granted only in proportion to the actual work performed to date. See California Rules of Court, rule 7.701. In any event, the last 25% of the statutory fees will not ordinarily be allowed before the approval of the final account and decree of distribution. (Former 1708(b))

(b) [Payment of Attorney Fees Where Estate Insufficient] If the estate lacks sufficient cash for payment of attorney fees, the court will generally allow and approve compensation but only award and order it paid to the extent that there is cash in the estate to do so. In such a situation, the beneficiaries may advance cash to the estate to pay the fees. The amounts advanced should be shown on the accounting and should not be included in the fee base for calculating ordinary fees.
(New)

1754 PRELIMINARY & FINAL DISTRIBUTION

(a) [Description of Distributees] The Petition for Distribution must set forth in detail the precise manner in which the estate is to be distributed. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient. The petition must set forth the name of the distributee and a statement as to whether the distributee is a minor or adult. (Former 1709(b))

(b) [Intestacy] Heirs who take by virtue of intestacy must be sufficiently described to permit the court to determine if the laws of intestate succession have been properly applied. (Former 1709(c))

(c) [Minors] If the distributee is a minor, the manner in which the funds are to be distributed must be identified. Probate Code section 3413 governs the distribution of money belonging to a minor. If money belonging to the minor is to be distributed to a fiduciary (e.g., a probate guardian, a trustee or custodian), the fiduciary must be identified in the petition.

In addition, the following documents must be submitted under the appropriate circumstances:

(1) Declaration from the parent(s) that the minor's estate, including the bequest, does not exceed the statutory maximum if distribution is to be made under Probate Code section 3401;

(2) A separate "Order To Deposit Money Into Blocked Account" (MC-355) if a blocked account is to be used. Within 15 court days following the date of the minute order, the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. The court will set a review hearing to ensure that the Receipt and Acknowledgment has been filed;

(3) A certified copy of the Letters of Guardianship, if distribution is to be made to a probate guardian;

(4) The consent of the custodian to act, if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).

(Former 1709(d))

(d) **[Order for Distribution]** Orders should be drawn so as to set forth the full plan of distribution. Orders may not contain distribution plans which refer to the petition or any other document. (Former 1709(e))

(e) **[Trustees]** If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. (Former 1709(f))

(f) **[Distribution Pursuant to Agreement]** If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be a written agreement on file and signed by all parties affected by the distribution. (Former 1709(g))

(g) **[Distribution to Deceased Heir or Beneficiary]**

(1) When an heir or beneficiary dies during administration of an estate, the order must provide for distribution to the personal representative of the estate of the heir or beneficiary, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

(2) If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered. If the required affidavit or declaration cannot be filed, the petition must state why it cannot be filed. (Former 1709(h))

(h) [Distribution Pursuant to Assignment] When distribution is requested pursuant to an assignment by a distributee, the assignment must be filed in the proceeding. The court may require additional information, including consideration paid, to assure that the assignor fully comprehends the effect of the assignment, that it was voluntarily made, and was not grossly unreasonable. (Former 1709(i))

(i) [Distribution Pursuant to Disclaimer] A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. The proposed distribution must comply with Probate Code sections 282 and 21110 as well as any other sections that may apply. (Former 1709(j))

1755 PETITION FOR ENTITLEMENT TO DISTRIBUTION

A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate. (Former 1711(a))

1760 DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

1761 SPOUSAL PROPERTY PETITION

(a) If the basis for claim that property should pass or be confirmed to the surviving spouse is that the property is community or quasi-community property, then the following information must be included in the spousal property petition:

- (1)** Date and place of marriage;
- (2)** Whether decedent owned any real and personal property on date of marriage, and if so, a description and approximation of values;
- (3)** For each asset for which a determination that it pass or be confirmed to the surviving spouse, a description of the manner in which the asset was acquired by decedent, including source of funds or loans, title to asset, etc.;
- (4)** Any additional facts upon which the claim that property is community or quasi-community property is based.

(b) If the claim is based on a document, a copy of the document must be attached to the petition and properly authenticated. (Former 1711(e).)

1770 CONSERVATORSHIPS

1771 STATUTORY DEADLINES FOR CONSERVATORSHIPS

It is the practice of this Court to enforce Probate Code time limitations for the filing of inventory and appraisals and other acts required during the first year up to an including accountings by the issuance of a Conservatorship Compliance Order concurrent with issuance of Letters. The Court reviews these cases regularly to ensure compliance. (New)

1772 CONSERVATORSHIP ACCOUNTINGS

(a) [Schedule for Submission] At the time the Court appoints a conservator or guardian, and unless the Court dispenses with accountings, the Court will set a compliance date for the conservator or guardian to file his or her first accounting and report, which will typically be no later than 90 days after the first year anniversary of the appointment of the conservator or guardian. If the conservator or guardian has filed the accounting and all is in order, this will be a nonappearance matter. Each time the Court hears a subsequent accounting and report, it will set a compliance date for the next accounting and report, which will typically be every two years thereafter. (Former 1714(f)(2))

(b) [Allegation re Trust] At the time of each accounting, a verified summary or recapitulation showing the following shall be filed as a confidential statement:

- (1) A description of the conservatee's beneficial interest in the trust;
- (2) The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal;
- (3) The name, address, and telephone number of the trustee; and
- (4) Any income distributed to or for the benefit of the conservatee. Such income must be included in an accounting to the Court pursuant to Probate Code section 2620. (Former 1714(f)(4))

(c) [Final Accounting]

(1) When a final accounting or report is filed, notice of hearing must be given pursuant to Probate Code section 2621. If the conservatee is deceased, notice of hearing must be given to the personal representative or trustee of any trust of which the conservatee was settlor and beneficiary. If the conservator is also the personal representative of the deceased conservatee's estate or there is no personal representative, notice must be given to the deceased conservatee's heirs and devisees.

(2) A final accounting must be required on termination of the conservatorship of an estate except under the following circumstances: (i) the former conservatee who has been restored to full capacity waives the accounting; (ii) if the conservatee

is deceased, when an accounting is waived by those persons entitled to receive distribution of the estate as provided in Probate Code section 10954; except that if conservator is also the personal representative of the conservatee's estate or trustee of a trust that is the beneficiary of a will, waivers must be required by all heirs or devisees; or (iii) when the Court has ordered that accountings are not required pursuant to Probate Code section 2628 and the conditions of that section are otherwise met.

(3) The report must include a statement of the specific assets on hand. The final report and/or accounting must be filed within 90 days of termination of the conservatorship of the estate. (Former 1714(f)(7))

(d) [Order Dispensing with Accounting]

(1) If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant a petition ex parte to dispense with the filing of an accounting.

(2) The petition may be brought at any time after the inventory and appraisal has been filed. The petition shall state:

(A) The value of the estate at the beginning and end of the accounting period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than the statutory amount. A copy of financial statements showing the ending balances shall be filed with the petition.

(B) The amount and nature of the "public benefit payments." It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than \$2,000.

(C) A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628. (Former 1714(f)(8))

1773 COUNSEL FOR PROPOSED CONSERVATEE OR CONSERVATEE

(a) **[Appointment]** If the Court determines that it is statutorily required or in the best interests of the proposed conservatee or conservatee, the Court shall appoint counsel for the conservatee from the list of attorneys qualified to accept such appointments maintained by the clerk, any other attorney appropriate for such appointment or the Public Defender's Office. Within forty-eight (48) hours of the appointment, the Court shall order a "meet and confer" for all counsel involved in the conservatorship proceeding, in person or by telephone.

(b) **[Role of Court Appointed Counsel]** Attorneys who are appointed as counsel for conservatees pursuant to Probate Code sections 1470, 1471, or 2356.5 have the following ethical obligations:

(1) **[Clients Who Are Non-Communicative or Clearly Delusional or Not Opposed to the Request Before the Court]** If the client is noncommunicative, or clearly delusional, or not opposed to the request before the Court, the attorney must evaluate the request before the Court and must orally

report to the Court his or her observations and recommendations as to what would be in the client's best interests, unless a written report is requested by the Court. Where a conflict arises between the attorney and the proposed conservatee or conservatee concerning the best interests of the proposed conservatee or conservatee, the Court may appoint a successor attorney. (Former 1714(g))

(2) [Clients Who Are Communicative, Alert and Are Opposed to the Request Before the Court] If the client is communicative, alert and opposed to the request before the Court, and if the attorney has a good faith belief that sufficient grounds exist to support the position taken by the client, the attorney must use all reasonable and appropriate means to obtain the result sought by the client. (Former 1714(g))

(3) [Clients Who Have Impaired Judgment and Are Opposed to the Request Before the Court] If the client appears to have impaired judgment and is opposed to the request before the Court, the attorney must report to the Court the attorney's observations and recommendations as to what would be in the client's best interests, as well as the fact that the client is opposed to the request and the apparent reasons for the opposition. The attorney must ensure that the client is given the opportunity to directly address the Court, if reasonably possible. (Former 1714(g))

(4) [Attorney to Disclose Proper Relationship] The attorney must disclose to the Court and all parties whether the attorney currently represents, or has previously represented, the conservator or proposed conservator. (Former 1714(g))

(5) [Duties Illustrative] The duties of an attorney as set forth in this Local Rule are intended to be illustrative and do not limit or alter the obligations of an attorney as provided in the Business and Professions Code, California Rules of Professional Conduct, and as otherwise provided by law. (New)

1774 FEES IN CONSERVATORSHIPS

(a) [Attorney Fees]

(1) Pursuant to CRC 7.751, the requested fee must be supported in a verified petition or by a separate verified declaration stating the nature, benefit to the conservatee or conservatorship estate, time spent, hourly rate, detail of services rendered, and the amount requested. The Court deems submission of a verified copy of the attorney's billing invoice to comply with rule 7.751. The court has the discretion to require additional justification for all attorney fees requested.

(2) Fees will not be allowed for matters which are overhead, secretarial in nature, or do not require special legal skills. Ordinarily, no more than one (1) hour will be allowed for a court appearance in nonlitigated matters.

(b) [Conservator Fees]

(1) The court's review of conservator's fee request shall consider the nature of services provided, their necessity, the success or benefit to conservatee or the conservatorship estate, time spent, hourly rate, basis for the hourly rate, detail of services performed, expertise required, and the amount requested. A broad, general description of services or a simple recitation of time spent is not adequate. The court has the discretion to require additional justification for all conservator fees requested. Counsel are directed to CRC 7.756 for additional factors which the court may consider. The Court deems submission of a verified copy of the fiduciary's billing invoice to comply with CRC 7.751.

(2) Professional and staff services should not include routine overhead items, such as secretarial and word processing time; time spent scanning or filing documents; cost of scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking. All requests must clearly indicate who has performed the services for which compensation is being requested. In the event that a fiduciary is performing services requiring special training and skills (e.g., a CPA preparing tax returns or performing an audit), the court may consider this on a case by case basis.

(3) No fees will ordinarily be allowed for services rendered by a family member which are of the type that the court finds are expected to be performed by a family member by virtue of the family relationship (e.g., sitting at the bedside of an ill conservatee or simply being present while handymen remove items from a garage to haul away).

(c) [General]

(1) Counsel and Fiduciaries should not assume that the court will automatically allow the maximum rates.

(2) Fees must be requested, waived, or deferred in conjunction with each accounting. If the petition is silent, the court will assume that fees have been waived. If deferral of payment is requested, the amount of fees requested must nevertheless be specified and adequately supported so the court can fix the amount to be deferred.

(New)

1780 GUARDIANSHIPS

1781 GUARDIANSHIP ACCOUNTING AND INVESTMENTS

- (a) [Reports Accompanying Accountings]** The report accompanying the guardian's accountings should contain a statement of the age, health, activity and whereabouts of the minor. Alternatively, the guardian may submit the Confidential Guardianship Status Report (Judicial Council form GC-251). [\(Former 1712\(f\)\(3\)\)](#)
- (b) [Separate Accounting for Each Minor]** When a guardian of the estate is appointed for more than one minor, the guardian shall file a separate accounting for each minor. Separate accountings may be included in a single petition. [\(New\)](#)
- (c) [Investments by Guardian]** The Court will not routinely grant the additional powers to the guardian pursuant to Probate Code sections 2590 and 2591. If a guardian wishes to invest or expend funds belonging to the minor, the guardian should petition the Court for authorization. If expenditures or investments are made by the guardian without prior authorization, such acts will not be considered for approval except on settlement of accounting. Except in rare and unusual cases, the Court will not approve investment in unsecured loans or loans to a near relative unless secured. [\(Former 1712\(j\)\)](#)
- (d) [Final Accounting]** A guardian's report will normally not be approved if accompanied by a Waiver of Accounting unless the minor is present in court and available to testify. [\(Former 1712\(k\)\)](#)

1790 TRUSTS

1791 TRUST PROCEEDINGS

(a) [Venue] Every petition filed under Probate Code section 17200 et seq. shall contain facts necessary to determine the principal place of administration of the trust. In most instances, this requires an allegation of the city or unincorporated area in which the day-to-day activity of the trust is carried on.

(b) [Related Cases] All petitions filed under Probate Code section 17200 et seq. which relate to the same trust shall be filed under the same case number.

(c) [Supporting Documents]

(1) Petitions requesting orders regarding the internal affairs of the trust pursuant to Probate Code section 17200 or conveyance or transfer of property claimed to belong to the trust pursuant to Probate Code section 850 shall be accompanied by a true and correct copy of the trust, including any amendments, disclaimers, and any directions or instructions to the trustee that affect the disposition of the trust.

(2) Petitions requesting a determination that certain property is an asset of the trust shall also include:

(A) Copies of all testamentary instruments;

(B) Copies of all pertinent and current documents of title to the assets in question. If the asset is an account, stock, or other asset for which a beneficiary designation may have been executed, a copy of the beneficiary designation must be submitted, or an allegation that inquiry has been made and no beneficiary designation was completed for the account.

(New)