

Proposed Amendments to Local Rules of Court

Effective July 1, 2013

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.02 OTHER PROBATE LAW AND COURT RULES

~~The provisions of the within chapter are not intended to embody all law or proceedings applicable to the situations described herein. Furthermore, while reference may be made to statutory and case law current at the time these Rules were revised, counsel are advised to take such steps as may be necessary to become familiar with the law in existence at the time their matters are before the Court. Unless otherwise inconsistent with this chapter as indicated herein, all other Monterey County Superior Court Local Rules are applicable to Probate Cases.~~

(Adopted effective October 1, 1998, Repealed July 1, 2013)

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.10 PROPOSED ORDERS—~~TIMING,~~ FORM AND CONTENT

~~A. With the exception of sales of property, Orders After Hearing in all uncontested matters must be submitted no later than twenty-one calendar days prior to the hearing date.~~

~~B. Where matters have been continued, new Orders reflecting the continued hearing date must be submitted no later than twenty-one calendar days prior to the hearing date.~~

~~C. The attorney preparing a formal order following a contested Court hearing must provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. Objections to form or content relating to orders prepared by counsel for signature by the Court must be in pleading form. Letter objections will be disregarded.~~

~~D.A.~~ In all conservatorships where Conservator is represented by counsel, counsel must approve the proposed Order as to form and content.

~~E.B.~~ Orders must be separate documents. Orders may not be included in the body of a Petition.

~~E.C.~~ Orders may not include a blank judicial signature page following the text on an Order. Use footers on the signature page which would include the case name and case number.

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.13 PLEADINGS MUST BE SIGNED BY REPRESENTATIVE, TRUSTEE, GUARDIAN OR CONSERVATOR

~~An executor, administrator, trustee, guardian or conservator is an officer acting pursuant to Court order. All accounts, petitions and other pleadings made in an official capacity must be signed and verified by such officer. The code provision allowing attorneys to verify certain pleadings in civil matters is not applicable to probate proceedings when the representative is acting in his or her official capacity.~~

(Adopted effective October 1, 1998; Rule 4.11 previously Adopted effective October 1, 1998; Renumbered as 4.13 effective January 1, 2009. Repealed effective July 1, 2013)

4.14 AMENDMENT OF PLEADINGS

~~A. Amended/Amendment to. An amended pleading, or an "amendment to" a pleading, as distinguished from a "supplement," requires the same notice (including publication) as the pleading which it amends. When a Judicial Council Form was used for the original pleading, the amended pleading shall also use a Judicial Council Form on which the word "Amended" is added to the caption.~~

~~B. Supplemental Pleading. A supplement to a petition should be captioned "Supplement To..." A properly captioned supplement does not require additional notice, but service of a copy of the supplement is still required in appropriate cases. In general, a supplement provides additional or clarifying information in support of the prayer of a petition.~~

~~Judicial Council Forms may be used to "amend" pleadings. They should not be used as an "Amendment To..." or "Supplement To..." a pleading, as these forms are complete in themselves.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.18 ADDITIONAL NOTICE REQUIREMENTS

- ~~A. When Additional Notice is Required. Under the provisions of Probate Code section 1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings. The Court will require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.~~
- ~~B. Termination of Guardianship and Conservatorship. This rule also applies in termination of guardianships and conservatorships. Notice and a copy of the petition must be given to a former minor, or a former conservatee on the settlement of the final account. Notice and a copy of the petition must also be given to the representative of the estate of a deceased ward or conservatee.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.19 NOTICE RE: SPECIAL LETTERS

~~Petitions for Special Letters will ordinarily not be granted without notice to the surviving spouse, the person nominated as executor, and any other person who on examination of the petition appears to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If a proper petition has been filed and it appears that a bonafide contest exists, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator.~~

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.17 Renumbered as 4.19 effective January 1, 2009. Repealed effective July 1, 2013)

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.21 SUBSEQUENT PETITIONS FOR PROBATE

~~Any other wills or codicils not specifically mentioned in the original petition must be presented to the Court by way of an amended petition or a second petition, and a new notice thereon must be published. Attaching a copy of any instrument without specific reference to it in the petition is insufficient (Est. of Olson (1962) 200 Cal.App.2d 234.) Where a will has been previously admitted and a Petition for Letters Testamentary or of Letters of Administration With Will Annexed is filed, the same notice is required as on the original petition.~~

4.22 NOTICE BY MAIL - BY WHOM GIVEN

- ~~A. Petitioner to Give Notice. Probate Code section 1041 requires the clerk to cause a hearing to be set on petitions, accountings, etc. The burden is upon the petitioner, or his/her attorney, to give notice of the hearing, or cause it to be given, and to file the proper proof of service. (See Probate Code sections 1041, 8003, 8100, 8110.)~~
- ~~B. Notice to a Minor. Notice to a minor heir or minor beneficiary shall be sent to any legally-appointed Guardian, and if none, to any adult having legal custody of such minor.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.23 HEIRS WITHOUT KNOWN ADDRESSES

~~The Court will require an affidavit or declaration stating specifically what efforts were made to locate an heir, devisee or legatee whose whereabouts is unknown before it will accept notice mailed to him or her at the County Seat under Probate Code section 1220. Addressed as follows:~~

~~General Delivery
Post Office
Salinas, CA 93902~~

~~See also Judicial Council comments on Code of Civil Procedure section 413.30 as to what efforts are necessary.~~

~~(Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 4.21 Renumbered as 4.23 effective January 1, 2009. Repealed effective July 1, 2013)~~

4.24 CONTINUANCE TO PERMIT FILING OF WILL CONTEST

~~If an interested party appears in person or by attorney when a petition for the probate of will is called for hearing and declares that he/she desires to file a written contest, the Court will ordinarily continue the hearing with the understanding that whether or not a contest is actually on file at the new hearing date, the hearing will nevertheless proceed.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.26 BONDING OF PERSONAL REPRESENTATIVES

- ~~A. Waiver of Bond in Will.—The fact that bond has been waived in the will should be alleged. Bond may be required for an executor who resides outside California even though waived in the will.~~
- ~~B. Waiver of Bond Ineffective.—Where bond has been waived as to specifically named individuals and those individuals do not act, the waiver of bond is ineffective.~~
- ~~C. Two or More Executors.—If the will names two or more executors but all do not wish to serve or cannot serve in such capacity and the will does not specifically waive bond as to less than the number specified, a bond may be required of those who do qualify.~~
- ~~D. Court Appointed Fiduciaries.—When the Court has appointed a fiduciary, the amount of the bond shall include “a reasonable amount for the cost of recovery to collect on the bond, including attorney’s fees and costs” as set forth in the California Rules of Court, Rule 7.207.~~
- ~~E. Increase or Reduction of Bond.—When the bond must be increased, the Court favors the filing of an additional bond rather than a substitute bond; when the bond may be reduced, the Court favors the use of an order reducing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be noticed and set for hearing.~~
- ~~F. Duty to Petition to Increase.—It is the duty of an estate representative, or counsel, if counsel becomes aware of facts evidencing that the bond should be increased, to petition the Court for an ex parte order increasing the bond to the total appraised value of personal property on hand plus one year’s estimated annual income from real and personal property. See also Local Rule 4.46 for required statement of counsel on “Inventory and Appraisal.”~~
- ~~G. Description of Bonds in Accounts.—In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property, and a statement of any additional bond required.~~
- ~~H. Bond for Sale of Real Property.—In all cases where independent powers to sell real property are granted (i.e., full power), the Court will require a bond covering the value of the real property, unless bond is statutorily waived. When an additional bond is required upon an order confirming sale of real property the additional bond should be submitted with the proposed order. The order will not be signed until the additional bond is filed.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.27 BOND FOR SPECIAL ADMINISTRATORS

~~Pursuant to Probate Code section 8481(b), unless sufficient allegations are set forth to warrant waiver, the Court will require a special administrator to post bond.~~

~~(Adopted effective October 1, 1998; Rule 4.24 Renumbered as 4.27 effective January 1, 2009.
Repealed effective July 1, 2013)~~

4.28 ISSUANCE OF LETTERS

~~A. Duties and Liabilities Form. To assure that his/her duties are understood, each Personal Representative of a decedent's estate must file with the Court, before Letters are issued, "Duties and Liabilities of Personal Representative" signed by him/her. All Personal Representatives shall complete and file the "Confidential Statement of Birth Date and Driver's License Number." This form is confidential and is sealed before being placed in the Court file.~~

~~B. Filing Bond. If a bond has been ordered, it must have been previously filed or must be presented along with the Letters to be issued.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.31 SPOUSAL PROPERTY PETITIONS

~~A. Probate Referee. Appointment of a probate referee is optional in accordance with the Probate Code.~~

~~B. Wills. If decedent died testate, a copy of the Will must be attached to the petition.~~

~~C. Proof of Community Property Claim. Where there is no Will and no written Community Property Agreement, the petition to determine and/or confirm community property must contain the following allegations:~~

~~1. Date and place of marriage.~~

~~2. Whether or not decedent owned any real or personal property on date of marriage. If so, describe and give approximate values.~~

~~3. Whether or not decedent ever received any property after date of marriage by gift, bequest, devise, decent, proceeds of life insurance or joint tenancy survivorship. If so, describe and give approximate values and date of receipts.~~

~~4. If any property was received by decedent under 3 above, whether or not it is still a part of this estate. If so, identify.~~

~~5. Any additional facts upon which the claim of community property is based.~~

~~6. If the claimed community character of the property is based on any document, a photocopy of that document, showing signatures, should be attached to and authenticated by the petition or by a supporting affidavit or declaration.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

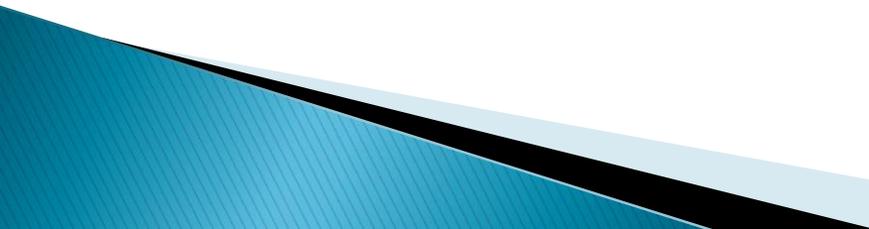
4.34 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

- ~~A. Available Only Where No Other Procedure Provided. The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute.~~
- ~~B. Specification of Instructions. The petitioner shall set forth in the petition and prayer the specific instructions which petitioner believes the Court should give, rather than asking the Court to select among a choice of options.~~
- ~~C. No Instruction as to Distribution. The Court is without power to "instruct" as to the manner in which an estate should be distributed. Such direction can only be furnished on a petition for distribution or by a petition to determine heirship. (Estate of Thramm (1945) 67 Cal App. 2d 657; Estate of Hoffman (1968) 265 Cal. App. 2d 135.)~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.35 PETITIONS TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY PURSUANT TO PROBATE CODE SECTION 9860

- ~~A. Caption. Such petitions shall be captioned in such a manner as to alert the clerk that the petition is one filed pursuant to Probate Code sections 9860 et seq., so the clerk can assure proper posting and setting for the hearing.~~
- ~~B. Notice of Hearing. The notice of hearing must contain a description of the property to which the petition pertains sufficient to give adequate notice thereof to any party who might be interested in the property, including, with respect to real property, the street address of the property, or if none, a description of the location of the property. Thirty (30) day notices of hearing are required.~~
- ~~C. "Answer." All notices of hearing given on such petitions must contain a statement advising that any person interested in the property, which is the subject of the petition, may file an answer to the petition. The Court prefers that an answer or answers be filed to assist the Court in its trial of the issues.~~
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Repeal

CHAPTER 4 – PROBATE DEPARTMENT

CREDITORS' CLAIMS

4.36 FILING, APPROVAL, REJECTION AND PAYMENT OF CLAIMS

- ~~A. Use of Forms. Creditors' claim forms are available for use by claimants and should be used to avoid any ambiguity as to whether or not a claim has in fact been filed within the statutory period. Notice to the estate of a debt must be given in the form of a claim filed as a demand against the estate and in a form sufficient to apprise the representative of the estate of the nature of the claim or demand. (Nathanson v. Superior Court (1974) 12 Cal. 3d 355.) Creditors' claims must be on the Judicial Council Form, filed with the Court, and mailed to the personal representative by the creditor. The name and address of the attorney for the estate should appear on the claim.~~
- ~~B. Approval and Rejection. All claims filed must be acted on by the representative. It is the duty of the attorney for the representative to see that all claims filed are ultimately allowed or rejected on the proper Judicial Council Form.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

INVENTORY, ACCOUNTS AND REPORTS

4.46 "INVENTORY AND APPRAISAL" TO SHOW SUFFICIENCY OF BOND

~~The "Inventory and Appraisal" filed with the clerk shall contain a statement, signed by the attorney, indicating whichever of the following is applicable:~~

- ~~• Bond waived.~~
- ~~• Bond filed \$ _____ insufficient.~~
- ~~• Bond filed \$ _____ sufficient.~~

~~If the bond is insufficient the estate representative shall immediately submit an ex parte petition for an order increasing the bond to the amount required by statute; that is, an amount equal to the value of all personal property and one year's income from all sources.~~

(Adopted effective October 1, 1998; Amended effective July 1, 2004; Rule 4.43 Renumbered as 4.46 effective January 1, 2009. Repealed July 1, 2013)

4.47 PROPERTY TAX CERTIFICATION TO BE FILED WITH "INVENTORY APPRAISAL"

~~A certification pursuant to Probate Code Section 8800(d) shall be filed concurrently with the filing of the "Inventory and Appraisal".~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.50 FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

~~In accounts, per Probate Code section 10810, the accompanying report must state the amount of administrator's or executor's commissions and the amount of attorney's fees sought and must set forth the estate accounted for and the calculation of commissions and fees in substantially the following form:~~

~~FEE BASE~~

~~Inventory and Appraisal _____ \$ _____
Receipts/Income During Admin. _____ \$ _____
Gains on Sales _____ \$ _____
Losses on Sales _____ (\$ _____)~~

~~Fee Base \$ _____~~

~~FEE COMPUTATION~~

~~4% on first \$100,000 _____ (_____) _____ \$ _____
3% on next \$100,000 _____ (_____) _____ \$ _____
2% on next \$800,000 _____ (_____) _____ \$ _____
1% on next \$9,000,000 _____ (_____) _____ \$ _____
1/2% on next \$15,000,000 _____ (_____) _____ \$ _____
Above \$25,000,000 (Rate: ___%) (Amount: _____) _____ \$ _____~~

~~_____ Total: \$ _____~~

~~[Note: Where a petition for distribution is accompanied by a waiver of accounting, detailed schedules of receipts and gains or losses on sale are required for the computation of the statutory fee unless the Inventory and Appraisal value is used as the basis for the fee.~~

Repeal

CHAPTER 4 – PROBATE DEPARTMENT

4.62 APPORTIONMENT OF FEES

~~Ordinarily, if apportionment of statutory fees between multiple attorneys is necessary, the Court will not allow partial payment but will defer all statutory fees until the final account is settled.~~

Repeat

CHAPTER 6 – CIVIL DEPARTMENT

APPENDIX D

REQUEST TO VACATE OR CONTINUE INITIAL CASE MANAGEMENT CONFERENCE AND ORDER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):	
TELEPHONE NO.: _____ FAX NO. (Optional) _____	
EMAIL ADDRESS (Optional): _____	
ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY MAILING ADDRESS: 1200 Aguajito Road CITY AND ZIP CODE: Monterey, CA 93940	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
Request to Vacate or Continue Initial Case Management Conference and Order	Case Number: _____
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____	

▶ IF APPLICABLE, THIS REQUEST AND ORDER MUST BE FILED CONCURRENTLY WITH THE CASE MANAGEMENT STATEMENTS, WHICH ARE DUE NO LATER THAN 15 DAYS BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE.
▶ PER LOCAL RULE 6.08(e), IF THE PARTIES DO NOT RECEIVE A SIGNED COPY OF THE ORDER GRANTING THE REQUEST, THEY MUST ATTEND THE CASE MANAGEMENT CONFERENCE.

Counsel and the parties certify that the initial Case Management Conference should be vacated or continued for the following reasons [circle one]:

1. All parties have appeared and agree to engage in the below ADR program [check one]:

- | | |
|--|--|
| <input type="checkbox"/> Court-Directed mediation | <input type="checkbox"/> Private mediation |
| <input type="checkbox"/> Nonbinding judicial arbitration | <input type="checkbox"/> Private arbitration |
| <input type="checkbox"/> Other: _____ | |

THE PARTIES AGREE TO COMPLETE THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM WITHIN 90 DAYS OF THE FILING OF THIS FORM. Further Case Management Conference is requested

2. Case is concluded and judgment or dismissal has been entered as to all parties.
3. Case has settled; dismissal shall be filed on or before _____
4. Case is at issue and all parties agree that matter may be set for trial without the necessity of a Case Management Conference.

5. All defendants have not been served and the plaintiff has been granted an extension by the court until _____ to complete service on all defendants.

Further Case Management Conference is requested.

6. A defendant has filed bankruptcy; case should be stayed pending the completion of bankruptcy. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any action by the debtor or the Bankruptcy Court that would act as a lifting of said stay.

7. Case has been removed to Federal Court. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any remand back to Superior Court or of any judgment or dismissal filed in the Federal Court.

Request to Vacate or Continue Initial Case Management Conference and Order

Case Number: _____

8. Plaintiff has obtained a default as to all defendants and will perfect the default by entry of court or clerk judgment in timely manner. Further Case Management Conference is requested.

9. All defendants have appeared and discovery is proceeding in a timely manner. For reasons set forth in the parties' Case Management Statements, the case should be designated (circle one) Category I, Category II or Category III. Parties anticipate case will be ready to set for trial as of _____ Further Case Management Conference is requested.

10. Other: _____

Further Case Management Conference is requested.

Counsel for Plaintiff (print name) _____ Counsel for Defendant (print name)

Signature Signature

Counsel for Plaintiff (print name) _____ Counsel for Defendant (print name)

Signature Signature

For additional parties, attach additional signature pages as needed.

Good Cause appearing, IT IS SO ORDERED that the Case Management Conference set for

_____ is vacated.

Supplemental Case Management Statements shall be filed as set forth in 6 or 7 above.

Receipt of Dismissal is set for _____

Further Case Management Conference is set for _____
Parties shall file Case Management Statements prior to said hearing per Local Rule 6.08(e).

Repeal

CHAPTER 12 – SETTING OF CONTESTED FAMILY LAW, PROBATE, ADOPTION AND UNLAWFUL DETAINER ACTIONS

12.08 CONTESTED PROBATE

~~Objections/Opposition to matters set for hearing shall be filed at least fifteen (15) days before the scheduled hearing date. Responses/Replies shall be filed at least seven (7) days before the scheduled hearing. The Court may, in its discretion, consider documents filed outside of these guidelines.~~

Repeal

CHAPTER 18 – JURY RULES

18.05 DEPOSIT AND REFUND OF JURY FEES

- ~~A. Jury Fees. Jury fees are returnable only when notice of cancellation of jury is received by the Court or the Clerk thereof two (2) court days before the date of trial, which notice may be given by telephone or otherwise. The deposit for jury fees, pursuant to Section 631 of the Code of Civil Procedure, is fixed at One Hundred and Fifty Dollars (\$150.00).~~
- ~~B. Waiver. Upon waiver of trial by jury by announcement or by operation of law, demand for trial by jury by opposing counsel shall be accompanied by a deposit for jury fees.~~



Repeal

CHAPTER 19 – MISCELLANEOUS RULES

LOCAL RULES OF COURT

19.04 PROPOSED ORDERS

~~The attorney preparing a formal order following a court hearing shall provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature.~~



Amend

CHAPTER 4 – PROBATE DEPARTMENT

4.05 MATERIAL TO BE INCLUDED IN PROBATE ORDERS

~~A.~~ Complete in Themselves. Orders shall contain the name of the judge presiding, the date of hearing and the department. ~~All pages of the orders~~ Order shall include the case name and number in a footer or header. All orders or decrees in probate matters must be complete in themselves. They shall set forth, with the same particularity required of judgments in civil matters, all matters actually passed on by the Court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be written so ~~drawn that~~ their general effect may be determined without reference to the petition on which they are based. Orders may reference attached exhibits where use of the exhibits is meant to safeguard against typographical errors, for example where lengthy property descriptions are involved. Exhibits must reference the case name and number. The preferred practice is to incorporate the Exhibit into the Order and provide for a judicial signature element at the end of the Exhibit. ~~All pages of the Order shall include the case name and number in a footer or header.~~

~~B.A.~~ Orders Settling Accounts. In orders settling accounts it is proper to use general language approving the account, the report and the acts reflected therein. It is not sufficient in any order to recite merely that the petition as presented is granted. Orders settling accounts must also contain a statement as to fees approved, fees waived, and the balance of the estate on hand, specifically noting the amount of cash included.

~~C.B.~~ Whenever an Order ~~shall be is~~ submitted to the Court, it will be accompanied by two complete, legible copies, along with copies of all documents attached to the proposed Order.

Amend

CHAPTER 4 – PROBATE DEPARTMENT

4.06 APPLICATIONS FOR EX PARTE ORDERS, ~~CONTENT OF ORDER~~

Procedures for ex parte applications in probate, trust, conservatorship and guardianship matters shall be conducted in the same manner as those in general civil cases, per Local Rule 7.11; ~~except that ex parte applications will be directed to the Probate Department.~~

4.08 PROBATE CALENDAR

Probate matters are heard in Monterey at ~~109:00~~ 10:00 a.m. on ~~Friday~~ Wednesday mornings. Please see the Court website at www.monterey.courts.ca.gov or call the Court at (831) 647-5800, for ~~specific times available dates. If Friday falls on a courthouse holiday, Probate may be heard on the preceding judicial day at the discretion of the Presiding Judge.~~ Matters shall be calendared at least 30 days prior to the hearing date. The petitioner shall include an appropriate date and time on for hearing on the documents submitted.

4.09 SUBMITTED CALENDAR

Certain probate, guardianship, and conservatorship proceedings may be submitted to the Probate Court without the necessity of a Court appearance by the petitioner in pro per or by the attorney for the petitioner. To determine if an appearance is required, ~~two weeks prior to the hearing, the Petitioner or attorney for petitioner may access case information by utilizing the~~ “View—view” “Probate Notes” on the Probate section of the Court's website at <http://www.monterey.courts.ca.gov/Probate/>

Amend

CHAPTER 4 – PROBATE

4.15 FILING DEADLINE

- ~~A. Initial pleadings for trust matters filed per Probate Code section 17200, initial guardianship petitions, pretrial conservatorship petitions, petitions for appointment of successor conservatorship, and any other petitions requiring the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.~~
- ~~B. Probate matters, conservatorship matters that do not require the participation of the Court Investigator, and any other petitions that do not require the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.~~
- C.A. When statutes provide that papers may be filed within three (3) calendar days of the hearing, service on opposing counsel must be by personal delivery (or by FAX when permitted by Rule 2.306 of the California Rules of Court).

Amend

CHAPTER 4 – PROBATE

NOTICES, PUBLICATION AND SERVICE OF CITATIONS

4.17 NOTICES GENERALLY

Notice requirements with respect to particular petitions or matters are set forth elsewhere in ~~this chapter~~ the Probate Code and California Rules of Court. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given.

When notice of hearing is required – whether by personal service, mailing or publication – petitioner must give such notice and file the necessary proof of service. The court clerk does not have this responsibility.

Amend

CHAPTER 4 – PROBATE

SALES

4.38 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert Administrator or Executor) and a REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY has been filed in these proceedings, which Report and Petition have been set for hearing on (insert hearing date) and notice made to all interested parties. THE PURPOSE OF THIS NOTICE IS TO INVITE BIDS OVER THE ACCEPTED OFFER, in accordance with the provisions of California Probate Code section 10311. By statute, the initial overbid must be in the amount of (insert First Overbid amount).

Overbids are invited for this property and must be in writing and presented on (insert Court confirmation hearing date) at ~~10:30 a.m.~~ (insert hearing time) in Department (insert department no.) of the Superior Court of the State of California, for the County of Monterey, 1200 Aguajito Rd., Monterey, California. Bid forms may be obtained from the attorney for the (Administrator or Executor) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

Amend

CHAPTER 4 – PROBATE

4.48 REQUIRED FORM OF ACCOUNTS

F. Account Waiver by Administrator/Trustee. The Court will ordinarily not approve a waiver of accounting where the Estate's Administrator is Trustee of a Trust which is the sole or a primary beneficiary of the estate.

F.G. Description of Bonds in Accounts. In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property and a statement of any additional bond required.

4.65 FORMAT FOR REQUESTING EXTRAORDINARY FEES FOR ATTORNEYS AND

4.65 PERSONAL REPRESENTATIVES IN DECEDENTS' ESTATES

- A. Compensation for Extraordinary Services. An application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice of hearing contain a reference to that application. All requests must comply with California Rules of Court, Rule 7.702, including the mandatory statement referenced therein.
- B. Discretion of Court. The award of extraordinary fees and commissions is within the discretion of the Court. Ordinarily extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See Estate of Walker (1963) 221 Cal.App.2d 792.)
- ~~C. Standards. The standards by which extraordinary fees and commissions will be determined for personal representatives and attorneys are reasonableness and benefit to the interested parties. The Court will take into consideration, among other things, the mandatory statement of facts, as required in California Rules of Court, Rule 7.702—Counsel and Personal representatives are directed to CRC, Rule 7.703. The Court will look at the reasonableness and benefit to the interested parties in determining whether and what amounts of extraordinary fees will be allowed. The court does not interpret the Probate Code or Court Rules as allowing payment for attorney's fees for services rendered by any non-attorney staff except for paralegals who demonstrate the qualifications referenced in Local Rule 4.66. Fees will not be allowed for matters which are overhead, secretarial in nature, or do not require special legal skills. Ordinarily, no more than 1 hour will be allowed for a Court appearance in nonlitigated matters. Costs for items such as office supplies will not be allowed.~~
- ~~D. Customary compensation limits. In reviewing requests for extraordinary fees, the Court considers the amounts historically and customarily allowed in the community. For attorneys' fees in nonlitigated matters, the Court has customarily allowed \$200 to \$300 per hour. The maximum the Court presently will allow is \$300 per hour. For paralegals meeting the standards referenced in Local Rule 4.66, the Court has customarily allowed \$85 to \$125 per hour. The maximum the Court will allow is \$125 per hour. For private professional fiduciaries, the maximum ordinarily allowed is \$85 per hour for services rendered by the fiduciary, and \$45 per hour for staff. All requests must clearly indicate who has performed the services for which extraordinary 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 will consider a higher hourly rate on a case by case basis. The Court will in its discretion review these rates from time to time and make such adjustments as it appears to the Court appropriate. Counsel should not assume that the Court will automatically allow the maximum rates set forth herein. Litigated matters will be considered on a case by case basis.~~

Amend

CHAPTER 4 – PROBATE

Amend

CHAPTER 4 – PROBATE

4.66 USE OF PARALEGALS

Pursuant to Probate Code sections 10811(b), 2642(a), 8547(d), and 10953(d), the use of paralegals to perform services of an extraordinary nature is permitted. No fees for such services will be allowed unless performed by a paralegal meeting the qualifications specified in Business and Professions Code section 6450 and California Rules of Court, Rule 7.702(e), and the petition contains the information set forth in Rule 7.702(e). The request for such fees must contain an itemized statement of services rendered by the paralegal. The Court will require an itemized statement of services rendered by each paralegal, accompanied by allegations relating to the qualifications of the paralegal, both as to experience and training.

(Adopted effective October 1, 1998; Rule 4.63 Renumbered as 4.66 effective January 1, 2009. Amended effective July 1, 2013)

4.67 PERSONAL REPRESENTATIVE COMMISSIONS

Local Rules 4.61, ~~4.62~~, 4.63, 4.64 and 4.65, are also applicable to requests for commissions for personal representatives in decedents' estates.

Amend

CHAPTER 4 – PROBATE

TRUSTEE AND TRUSTEE'S ATTORNEY FEES

4.70 TRUSTEE FEES

Requests for trustee fees must be supported in the petition or in a separate verified declaration stating the nature, necessity, success, cost in time, detail of services performed, the value of the services believed to warrant additional fees, and the amount requested. Mere recitation of time spent, without more, is not adequate. In making this determination the criteria set forth in Estate of Nazro (1971), 15 Cal.App.3d 218 shall be applied. The Court has discretion to require further justification for all trustee fees. Although the Court will, as a general guideline, allow a fee of 3/4 of 1% of fair market value per annum, Court approval must nevertheless first be obtained in all instances where the amount of compensation is not expressly authorized in the trust instrument. Mere recitation of the 3/4 of 1% guideline is not sufficient. Trustees who base their requests for compensation on this guideline shall include a second column in the accounting which shall indicate the fair market value of each trust asset next to the carry value. Fiduciaries who seek court approval of trustee fees are referred to Local Rules 4.65 and 5.27 for the amounts customarily and historically allowed by the Court.

Amend

CHAPTER 4 – PROBATE

4.71 ALLOWANCE OF ATTORNEY FEES FOR TRUSTEE REPRESENTATION

Attorney fees for trustee representation will be allowed according to the work actually performed. In general, requests for attorney fees must be supported in a petition or in a separate verified declaration stating the specific nature, benefit, time expended, detail of services performed and the amount requested. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. In any situation in which approval of fees by the court is required, counsel are referred to Local Rule 4.65 for fees customarily and historically allowed.

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANS

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator regardless of whether proposed conservatee is the petitioner or will attend the hearing:

- A. The supplemental information described in 5.03(b), above and Judicial Council Form GC 312 “Confidential Conservator Screening Form.”
- ~~B. Notice of Hearing (issued by Clerk’s Office). A minimum of thirty (30) days notice to the Court Investigator is required.~~
- ~~C. B. Citation, to be issued by Clerk’s Office, except where the proposed conservatee is the petitioner. Notice shall be given at least fifteen (15) days prior to hearing.~~

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANS

5.27 FEES IN CONSERVATORSHIPS

- C. Attorney Fees. In determining attorney fees for representation of conservators or conservatees, the Court will consider those factors referred to in Local Rule 4.3365 and 4.66. Counsel are directed to California Rules of Court, Rules 7.750-7.755. All fee requests must comply with California Rules of Court, Rule 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. A recitation of time spent, without more, is not adequate. The Court has the discretion to require additional justification for all attorney fees requested.
- D. Conservator Fees. 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 California Rules of Court, Rule 7.756 for additional factors which the Court may consider, and to Local Rule 4.65 for the amounts customarily allowed for attorneys and professional fiduciaries. For nonprofessional fiduciaries, the Court customarily will allow no more than \$45 per hour, except when services are performed by family members, in which case the maximum allowed will be \$25 per hour. No fees will ordinarily be allowed for services rendered by a family member which are of the type which 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). Fiduciaries should not assume that the Court will automatically allow the maximum rates.

Amend

CHAPTER 7 – LAW AND MOTION

7.02 LAW AND MOTION CALENDAR

A. FAMILY LAW

Family Law and Motion matters, whether one or two attorney, are heard in Monterey, at 9:00 a.m., on ~~Fridays~~Wednesdays.

Family Law and Motion matters *in pro per* are heard in Monterey, at 9:~~00~~45 a.m., on Thursdays.

B. MEET AND CONFER FOR ~~DOMESTIC-FAMILY~~ LAW AND MOTION MATTERS

7.12 ~~LAW AND MOTION~~EXECUTED ORIGINAL OF AMENDED PLEADING

The purpose of this Rule is to ensure the court's records include the executed original of every amended pleading as a free-standing, file-stamped document. As set forth in other rules, amendment of pleadings requiring leave of the court may be made upon the granting of a motion or by stipulation.

Amend

CHAPTER 9 – APPELLATE DEPARTMENT

9.02 JUDICIAL ASSIGNMENT AND SESSIONS

The Presiding Appellate Judge shall supervise the business of the department. All motions, including ex parte applications for orders, shall be presented to the Presiding Appellate Judge. The Presiding Appellate Judge may act on routine matters, or may schedule a motion or other matter for hearing before the panel at his or her discretion.

The panel is composed of three judges, including the Presiding Appellate Judge. A fourth judge is assigned as an alternate appellate panel member.

Traffic infraction appeals shall be (1) set for hearing every fourth Thursday and (2) heard and decided by the Presiding Appellate Judge or his or her designee from the appellate panel.

Limited civil and misdemeanor appeals shall be (1) set for hearing every ~~third Wednesday~~ first Thursday and (2) heard and decided by the appellate panel.

Amend

CHAPTER 10 – FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

- A. Family Law and Motion Attorney and Pro Per Calendars. There shall be a Family Law and Motion Attorney and a Pro Per Calendar which shall be heard at the time and place set by the Court.
1. ~~Friday's-Wednesday's~~ Family Law and Motion Cases: The court shall routinely maintain, update, and post a calendar online and on the court bulletin board identifying the judge assigned to hear the family law cases scheduled on ~~Friday's-Wednesday's~~ Family Law and Motion calendar in Department 13. All such cases are hereby assigned to be heard by the Presiding Family Law Judge unless a different judge is designated on the posted calendar for a particular ~~Friday~~Wednesday, in which event, the designated judge is hereby assigned to hear those cases as of the date indicated on the posted calendar.
 2. The posted calendar of assignments shall reflect the date of posting each updated assignment and the Superior Court Clerk shall maintain a record of each update and when it was posted.
 3. The assignment of alternate judges to hear the ~~Friday-Wednesday~~ Family Law and Motion Calendar shall be made by the Presiding Judge, the Supervising Civil Judge, the Presiding Family Law Judge, or a judicial delegate.

Amend

CHAPTER 10 – FAMILY LAW DEPARTMENT

10.03 CHILD AND SPOUSAL SUPPORT

A. CHILD SUPPORT

The amount of child support awarded will be determined according to the guidelines set forth in Family Code Section 4050 et seq. The percentage of time each party spends with the child(ren) shall be calculated by counting the number of hours that the children spend with each party divided by the total hours for the time period in question.

1. Credit for Time Spent with Others. ~~It is a rebuttable presumption that the parent who drops off and picks up the child shall receive the hourly credit for that period of time the child is with someone other than a parent. If one parent drops off and the other parent picks up, then the time is to be divided equally. The parent who bears primary responsibility for the child even during periods when the child is with others, will be attributed with the hourly credit for that time.~~

Amend

CHAPTER 10 – FAMILY LAW DEPARTMENT

NOTE: Existing Rule 10.09 (A) and 10.09 (H) are renumbered to 10.10 (A) and 10.09 (H) to accommodate a new local rule 10.09.

10.10 MISCELLANEOUS RULES

A. DUPLICATE FILING

Copies of previously filed pleadings or, declarations ~~or other documents~~ should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient.

H. COMPLAINTS CONCERNING FAMILY COURT SERVICES MEDIATORS AND INVESTIGATORS/LIAISONS.

Complaints not in connection with court-ordered evaluations (subsection H), must be made in writing and addressed to the Court Executive Officer, Superior Court of California, County of Monterey, 240 Church Street, Salinas, CA 93901. The Court Executive Officer or designee, will conduct an investigation and will respond to the written complaint within (30) days. The complainant may appeal the response to the Presiding Judge. The Presiding Judge will rule on the appeal within thirty (30) days. *(Adopted effective January 1, 2004, pursuant to CRC 5.500(c); Renumbered from Rule 10.08 to Rule 10.09 effective January 1, 2005; Amended effective July 1, 2007; Rule 10.09 A-H Re-lettered and Amended effective January 1, 2009)*

Amend

CHAPTER 17 – DUTIES OF ATTORNEYS

17.06 COPIES OF PLEADINGS, JUDGMENTS AND APPEALABLE ORDERS

Attorneys or individuals acting as their own attorney shall furnish the Clerk with copies of all pleadings, judgments and appealable orders as follows:

- A. An original and no more than 2 copies of any civil judgment, proposed civil judgment appealable order or pleading;
- B. An original and ~~43~~ copies of any family judgment or proposed family judgment;
- C. An original and 2 copies of the Notice of Entry of Judgment (FL-190) along with a stamped self-addressed envelope for each party;
- ~~D. The Clerk shall return copies if a self-addressed stamped envelope is provided. The Court retains the original and one copy of the judgment for microfilming.~~

17.08 ORDERS AND JUDGMENTS SUBMITTED AFTER HEARING

- A. The party directed by the court shall prepare the findings and order after hearing, judgment and order in accordance with the court's decision, or stipulation put on the record and shall submit it to opposing counsel/party for objection or approval pursuant to California Rules of Court Rule 3.1312 and Rule 5.125.

Amend

CHAPTER 19 – MISCELLANEOUS RULES

19.01 CONFORMING COPIES

The Superior Court Clerk will conform a maximum of two copies of any document at the time of filing. Additional copies will be provided by photocopying and the standard Superior Court Clerk fee for copies will be charged.

A. CONFORMING COPIES – CIVIL DIVISION

If a conformed copy is desired an additional copy or copies must be submitted. The Superior Court Clerk will conform a maximum of two copies at the time of filing. Parties requesting that the Clerk's Office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage.

If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face of the pleading will be mailed and the conformed copy will be placed in the attorney/pro per pick up box for thirty (30) days.

If no envelope is provided, the conformed copy or copies will be placed in the attorney/pro per pick up box for thirty (30) days. The pickup area is located in the lobby of the first floor Clerk's Office.

NEW

CHAPTER 10 – FAMILY LAW DEPARTMENT

10.09 FAMILY CENTERED CASE RESOLUTION

Parties seeking dissolution, nullity, legal separation, termination of domestic partnership, and establishment of paternity under the Uniform Parentage Act are subject to compliance with procedural milestones set forth in California Rules of Court, rule 5.83.

NEW

CHAPTER 14 – CRIMINAL DEPARTMENT

14.15 NIGHT COURT

Night Court is held the last Monday of every month (excluding holidays) for traffic arraignments and special sets from the Court. No pre-trial or court trials will be set for Night Court (VC42006(a)).

(Adopted effective July 1, 2013)

14.16 TRAFFIC SCHOOL

The Court does not allow installment payments on cases where the defendant is requesting to attend traffic school. (VC42007(a)(2)).

(Adopted effective July 1, 2013)

14.17 MOTION TO RE-OPEN CASE ADJUDICATED BY BAIL FORFEITURE

Any motion to re-open a conviction reported to the Department of Motor Vehicles following a bail forfeiture under Vehicle Code section 40512 or reported as a failure to complete traffic violator school under Vehicle Code section 40512.6 shall be filed with the Traffic division no later than 90 days from the date of the bail forfeiture.

NEW

CHAPTER 14 – CRIMINAL DEPARTMENT

14.18 REQUEST FOR EXTENSION

Upon written or verbal request for an extension of time to take care of an infraction traffic or infraction non-traffic matter, the Clerk of the Court or designee is authorized to grant a one (1) time 60-day extension from the original pay or appear date (appearance date on citation).

(Adopted effective July 1, 2013)