

**CHAPTER 4**  
**PROBATE DEPARTMENT**

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### **GENERAL PROVISIONS**

#### **4.1 PREAMBLE**

The rules of this chapter apply to every action and proceeding to which the Probate Code applies. These rules are designed to supplement the Probate Code and Title 7 of the California Rules of Court and to promote uniformity in practice and procedure in Monterey County. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law. If a certain law or provision is not addressed in this chapter of the Local Rules of Court, please review the Civil chapter of the Local Rules of Court or the California Rules of Court for information pertinent to the law or provision.

*(Adopted October 1, 1998; Amended January 1, 2007; Rule 5.0 renumbered as 4.1 and amended January 1, 2022)*

#### **4.2 PROBATE JUDGE**

The probate judge shall be designated by the presiding judge.

*(Adopted October 1, 1998; Rule 4.1 renumbered as 4.2 January 1, 2022)*

#### **4.3 CONSOLIDATION OF RELATED CASES (Code of Civil Procedure section 1048; California Rules of Court, rule 3.350)**

Whenever it appears that two (2) or more petitions with different case numbers have been filed involving the same matter or proceeding, the court will, on its own motion at the earliest opportunity, consolidate all of the matters into the file bearing the lowest number. All documents filed after consolidation must bear the case number of the controlling file.

*(Rule 4.04 previously adopted October 1, 1998; Amended January 1, 2002; Renumbered as 4.0 and new rule 4.04 adopted January 1, 2009; Amended July 1, 2017; Rule 4.4 renumbered as 4.3 January 1, 2022)*

#### **4.4 PROBATE NOTES**

Probate notes are posted on the court's website ahead of a hearing to alert parties to procedural deficiencies or issues the court wishes to discuss at the hearing. Parties are expected to check probate notes ahead of the hearing and to address the issues prior to the hearing. Probate notes can be accessed on the court's website at [www.monterey.courts.ca.gov/probate/notes](http://www.monterey.courts.ca.gov/probate/notes).

*(Adopted January 1, 2022)*

#### **4.5 CONTACT WITH RESEARCH ATTORNEY / PROBATE EXAMINER**

The research attorneys and probate examiners are not required to provide answers to general legal and/or hypothetical questions. General legal questions or questions involving hypothetical fact situations will be discussed at the discretion of the research attorney. Such discussions may

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not be cited as authority for actions subsequently taken and should not be cited or added to pleadings.

Research attorneys and probate examiners should not be considered an alternative to basic legal research.

*(Adopted October 1, 1998; Rule 4.06 renumbered as 4.07 and amended January 1, 2009; Amended July 1, 2017; Rule 4.7 renumbered as 4.5 and amended January 1, 2022)*

#### **4.6 – 4.9 RESERVED**

### **PLEADINGS, PAPERS, AND FORMS**

#### **4.10 CAPTION OF PETITIONS AND PLEADINGS**

With the exception of Judicial Council forms, all separately filed pleadings and declarations must include in the caption, the date, time, and place of hearing.

The calendar department of the court is not required to read the body of the petition or the prayer to determine the adequacy of the pleading. The caption of petitions must be all-inclusive as to the relief sought in the petition so that the matter may be properly calendared and posted, and filing fees, if any, determined.

*(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.10 renumbered as 4.12 and amended January 1, 2009; Rule 4.12 renumbered as 4.10 and amended January 1, 2022)*

#### **4.11 AMENDED PLEADINGS**

When filing an amended pleading after the initial hearing, parties shall file a declaration providing an explanation of the amendment(s) to the original pleading or a redlined/highlighted version showing the changes made.

*(Adopted January 1, 2022)*

#### **4.12 USE OF POST OFFICE BOX NUMBERS**

Any documents which require the address of a fiduciary in any probate, conservatorship, or guardianship matter must provide a complete street address. The use of P.O. Box numbers or letters alone is not acceptable.

*(Adopted October 1, 1998; Rule 4.69 renumbered as 4.72 January 1, 2009; Rule 4.72 renumbered as 4.13 and amended January 1, 2022)*

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#### **4.13 LOCAL FORMS**

The Probate Department uses local forms for mandatory or optional use, which are referred to in the rules of this chapter. See Local rule 19.16 for more information.

*(Adopted January 1, 2022)*

#### **4.14 – 4.19 RESERVED**

#### **HEARINGS**

#### **4.20 PROBATE CALENDAR AND SETTINGS**

Probate matters are heard in Monterey on Wednesdays. Please see the court's website at [www.monterey.courts.ca.gov](http://www.monterey.courts.ca.gov) for available dates.

When filing a petition or other paper requiring a hearing, submit a notice of hearing. If a hearing has not been scheduled, the petitioner shall leave the space for the date blank. The clerk will fill in the next available date on the document, unless the date requested in the e-filing comment is available. Petitioner may request a particular date when submitting the documents.

If it appears that a matter will require more than ten (10) minutes, the court may reset the matter to another time and/or day.

*(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended July 1, 2004; Rule 4.07 renumbered as 4.08 and amended January 1, 2009; Amended July 1, 2013; Amended July 1, 2017; Rule 4.8 renumbered as 4.20 and amended January 1, 2022)*

#### **4.21 APPLICATIONS FOR EX PARTE ORDERS**

- A. Procedures for ex parte applications in decedent's estate, trust, conservatorship, and guardianship matters shall be conducted in the same manner as those in general civil cases, per Local Rule 7.11.
- B. The following applications for orders may be made and considered on the papers alone and without a hearing. In considering the application, the court may require the application be set for hearing:
  - 1. Appointing counsel for a conservatee or minor.
  - 2. Appointing a guardian *ad litem*.
  - 3. Appointing a probate referee.
  - 4. Amending Letters based on death or name change.
  - 5. Obtaining an amended order.
  - 6. Increasing bond. California Rules of Court, rule 7.204.
  - 7. Waiving an accounting. Probate Code section 2628.
  - 8. Withdrawing funds from blocked account. California Rules of Court, rule 7.954.
  - 9. Obtaining an earlier hearing date on a petition or motion.
  - 10. Allowing an exclusive listing for the sale of real property. Probate Code section 10150.

*(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Rule 4.05*

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*renumbered as 4.06 January 1, 2009; Repealed January 1, 2011; Amended July 1, 2012; Amended July 1, 2013; Rule 4.6 renumbered as 4.21 and amended January 1, 2022, Renumbered to add subd. (B) January 1, 2023)*

### **4.22 APPEARANCES**

All matters require an appearance, unless otherwise stated in these rules, or the Probate Notes state the matter is ready for decision absent objection and that no appearance is required. If an objection is raised at the hearing and petitioner elected not to appear, the matter may be continued. If an appearance is not excused by the Probate Notes and no one appears, the court may set an Order to Show Cause re: dismissal or take other action.

To determine if an appearance is required, view “Probate Notes” on the probate section of the court’s website at <http://www.monterey.courts.ca.gov/Probate/>.

*(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2004; Rule 4.08 renumbered as 4.09 and amended January 1, 2009; Amended July 1, 2013; Amended July 1, 2017; Rule 4.9 renumbered as 4.22 and amended January 1, 2022)*

### **4.23 CONTINUANCES**

Matters may not be continued by the petitioning party or by stipulation of counsel without authorization from the court. The court will not accept telephone or letter requests to continue the matter. All requests for continuance shall use Local form CI-105, Request for Continuance of Hearing & Order. The fee stated in Government Code section 70617 shall be submitted with the request. All requests should be filed with the court no later than five (5) court days prior to the hearing.

*(Adopted October 1, 1998; Rule 4.14 renumbered as 4.16 January 1, 2009; Amended July 1, 2017; Rule 4.16 renumbered as 4.23 and amended January 1, 2022)*

### **4.24 – 4.29 RESERVED**

## **ORDERS**

### **4.30 MATERIAL TO BE INCLUDED IN PROBATE ORDERS**

- A. Orders shall contain the name of the judge presiding, the date of hearing and the department. All pages of the order shall include the case name and number in a footer or header. All orders 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 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.

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- B. 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.

*(Adopted October 1, 1998; Amended January 1, 2002; Rule 4.04 renumbered as 4.05 and amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2013; Amended July 1, 2017; Rule 4.5 renumbered as 4.30 and amended January 1, 2022)*

#### **4.31 PROPOSED ORDERS—FORM AND CONTENT**

- A. Orders must be separate documents. Orders may not be included in the body of a petition, application, or motion.
- B. 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.
- C. In all contested matters or upon request of the court, parties shall comply with California Rules of Court, rule 3.1312 in preparing and submission of orders. In lieu of electronically submitting editable word-processing versions of proposed orders to the court's electronic service address, parties must electronically file the proposed order in PDF format using the court's electronic filing system.

*(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2006; Amended January 1, 2007; Rule 4.09 renumbered as 4.10 and amended January 1, 2009; Repealed 4.10 (A)-(C) and renumbered (D)-(F) to (A)-(C) July 1, 2013; Amended July 1, 2017; Rule 4.10 renumbered as 4.31 and amended January 1, 2022)*

#### **4.32 – 4.34 RESERVED**

#### **MISCELLANEOUS MATTERS**

#### **4.35 DECLARATION OF DUE DILIGENCE – DISPENSING WITH NOTICE (California Rules of Court, rule 7.52)**

If a person entitled to notice cannot be located for service, parties may use optional Local form CI- 129, Declaration of Due Diligence, to show their current efforts to locate the person.

*(Adopted January 1, 2022)*

#### **4.36 WITHDRAWAL OF COUNSEL OF RECORD (Code of Civil Procedure section 284)**

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.



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- A. When a substitution of attorney is not filed, counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a motion to withdraw in accordance with California Rules of Court, rule 3.1362.
- B. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the notice required by Probate Code section 1213.

*(Rule 4.11 previously adopted October 1, 1998; Renumbered as 4.13 January 1, 2009; New rule 4.11 adopted January 1, 2009; Rule 4.11 renumbered as 4.36 and amended January 1, 2022)*

#### **4.37 PROVISION RE: SURVIVORSHIP IN WILL**

If a spouse's right 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 until the expiration of the survivorship period.

*(Adopted October 1, 1998; Rule 4.29 renumbered as 4.32 January 1, 2009; Rule 4.32 renumbered as 4.37 and amended January 1, 2022)*

#### **4.38 SPOUSAL OR DOMESTIC PROPERTY PETITION (Probate Code sections 13650 - 13660)**

A spousal or domestic property petition that seeks a determination of the community or quasi-community property character of property must contain the following information if the decedent's last will does not leave all property to the surviving spouse or if the surviving spouse is not the sole intestate heir:

- A. The date of marriage;
- B. A description of whether the property that is the subject of the petition was acquired prior to or during marriage, and the source of the funds used to acquire the property;
- C. A statement concerning the legal title to the real property at the decedent's date of death; and
- D. If the petition alleges the character of property was transmuted after December 31, 1984, a written, signed copy of the transmutation must be attached to the petition.

*(Adopted January 1, 2022)*

#### **4.39 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM (Probate Code sections 3500 – 3612)**

- A. Petition. A petition to compromise the claim of a minor or incompetent (Judicial Council form MC-350) will be heard in the civil department. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union, or savings and loan association in the manner provided by law, with receipts filed.

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- B. Order. The order approving compromise (Judicial Council form MC-351) shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to the proposed trustee AND the bank, credit union, or savings and loan association. A separate order to deposit money into blocked account (Judicial Council form MC-355) shall be submitted contemporaneously with the order approving compromise.
- C. Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.
  - 1. The receipt and acknowledgment for deposit into blocked account (Judicial Council form MC-356) shall be signed by a manager or assistant manager and filed with a business card.
  - 2. The court will set a hearing for proof of deposit into blocked account or proof of purchase annuity. Unless otherwise ordered by the court, no appearance at the proof of deposit hearing is required if proof of deposit is filed with the court prior to that date.

*(Adopted October 1, 1998; Amended January 1, 2004; Amended January 1, 2007; Rule 5.35 renumbered to 5.42 and amended January 1, 2009; Amended January 1, 2011; Amended July 1, 2014; Rule 5.42 renumbered as 4.39 and amended January 1, 2022)*

#### **4.40 – 4.49 RESERVED**

#### **DECEDENTS' ESTATES**

#### **APPOINTMENT OF EXECUTORS AND ADMINISTRATORS**

#### **4.50 ALLEGATIONS IN PETITIONS RE: BENEFICIARIES**

- A. Nominated Trustee(s). The nominated trustee(s) of a trust created by a will must be listed as a beneficiary. If the trustee is also the estate representative or no trustee has been appointed, the individual trust beneficiaries must also be set forth and served with notice of hearing as set forth in Probate Code section 1208.
- B. If the beneficiary of a will is a trustee for a trust, then petitioner must file a copy of the Trust as a separate confidential document.
- C. If there is an allegation in the petition for probate that there is an issue of a pre-deceased child, then include the name of the pre-deceased child(ren) and the date of death when listing all heirs of the Decedent in the initial petition seeking appointment of a personal representative.
- D. Post-deceased Beneficiaries. If a beneficiary dies after the decedent, and a personal representative has been appointed for the beneficiary, the beneficiary should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the beneficiary should be listed as deceased and notice should be given to the beneficiaries of the post-deceased beneficiary. In either case, the date of death of the post-deceased beneficiary should be included.

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- E. Contingent Beneficiaries. All contingent beneficiaries must be listed in the petition and are entitled to receive notice of the hearing.

*(Adopted October 1, 1998; Amended January 1, 2001) Rule 4.18 renumbered as 4.20 January 1, 2009; Amended July 1, 2017; Rule 4.20 renumbered as 4.50 January 1, 2022)*

#### **4.51 DECLINATIONS AND CONSENTS TO SERVE**

- A. Declination of Named Executor. It is insufficient to allege that the person named in the decedent's will as executor declines to serve. A written declination to serve, verified under penalty of perjury by such person, must be filed with the court. (Code of Civil Procedure section 2015.5.)

- B. Two or More Executors. If a petition for letters to be issued to two (2) or more executors is filed, and one (1) or more of the named executors is not a petitioner, each non-petitioning executor must file a consent to act, verified under penalty of perjury.

*(Adopted October 1, 1998; Rule 4.26 renumbered as 4.29 January 1, 2009; Rule 4.29 renumbered as 4.51 and amended January 1, 2022)*

#### **4.52 CONFIDENTIAL STATEMENT OF BIRTH DATE AND DRIVER'S LICENSE NUMBER**

The court requires all proposed personal representatives to file the Confidential Statement of Birth Date and Driver's License Number (Judicial Council form DE-147S) pursuant to Probate Code section 8404, subdivision (b).

*(Rule 4.25 previously adopted October 1, 1998; Amended January 1, 2008; Renumbered as 4.28 January 1, 2009; New rule 4.25 adopted January 1, 2009; Rule 4.25 renumbered as 4.52 and amended January 1, 2022)*

#### **4.53 MULTIPLE FIDUCIARIES**

When multiple personal representatives are appointed, letters shall be issued jointly to all of them, and not separately to any of them, unless specifically permitted by court order.

*(Adopted October 1, 1998; Rule 4.27 renumbered as 4.30 January 1, 2009; Rule 4.30 renumbered as 4.53 and amended January 1, 2022)*

#### **4.54 – 4.59 RESERVED**

### **ACCOUNTS, REPORTS, DISTRIBUTION, DISCHARGE**

#### **4.60 REQUIRED FORM OF ACCOUNTS (Probate Code sections 1060 – 1064)**

- A. All accounts filed in probate proceedings shall comply with Probate Code sections 1060 through 1064.

- B. Waiver of Accounting. A detailed accounting may be waived by petition when all interested persons consent, are adult and competent. All waivers must be filed with the court. The effect

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of the waiver is to make it unnecessary to provide financial details, with the exception of a detailed listing of the property to be distributed and its' value for distribution purposes. All other matters normally reported upon at the time an accounting is filed must be presented in the petition. (See California Rules of Court, rule 7.550.)

- C. 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 that is the sole or a primary beneficiary of the estate, unless all trust beneficiaries waive the filing of an account.
- D. 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.

*(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.45 renumbered as 4.48 January 1, 2009; Amended July 1, 2013; Rule 4.48 renumbered as 4.60 and amended January 1, 2022)*

#### **4.61 ALLEGATION RE: CREDITOR CLAIMS**

Prior to filing the interim or final account, counsel are advised to review the court file to ensure that all creditors' claims which may have been filed have been addressed in the interim or final account. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived, to allege merely that all claims have been paid. The personal representative shall provide the information required in California Rules of Court, rule 7.403.

Known creditors, contacted pursuant to Probate Code sections 9050 to 9054, inclusive, must be listed, whether or not such creditors filed a claim against the estate. Notices of administration required by Probate Code section 9050 must be on file with the court prior to, or at the time of, the hearing on the petition for final distribution.

The foregoing allegations must appear in the final report even though they may have appeared in whole or in part in prior reports.

*(Adopted October 1, 1998; Rule 4.46 renumbered as 4.49 January 1, 2009; Rule 4.49 renumbered as 4.61 and amended January 1, 2022)*

#### **4.62 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS**

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken. The allegation shall set forth reasons for any delay in making payment. The court will not allow credit for payment of interest where the delay in payment of the claims is not justified by the facts set forth.

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101, which provides that interest is allowed commencing sixty (60) days after the date of death.

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*(Adopted October 1, 1998; Rule 4.33 renumbered as 4.36 January 1, 2009; Rule 4.37 renumbered as 4.62 and amended January 1, 2022)*

#### **4.63 PROPERTY TO BE DISTRIBUTED MUST BE LISTED (California Rules of Court, rule 7.651))**

The petition for distribution must list and describe in detail all property to be distributed, individual values and the total value. Description by reference to the inventory is not acceptable.

The petition for distribution must also list and describe in detail each beneficiary's specific share of all property to be distributed.

*(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.48 renumbered as 4.51 January 1, 2009; Rule 4.51 renumbered as 4.63 and amended January 1, 2022)*

#### **4.64 DEBTS PAID WITHOUT VERIFIED CLAIMS**

Even if a claim has not been filed, the court may, under Probate Code section 9154, approve the payment of a debt if the accounting or final report shows that such debt was allowed during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the court and must be justified by allegations in a verified petition.

*(Adopted October 1, 1998; Rule 4.49 renumbered as 4.52 January 1, 2009; Rule 4.52 renumbered as 4.64 and amended January 1, 2022)*

#### **4.65 DESCRIPTION OF DISTRIBUTEES**

The names and present addresses of all persons who are affected by the petition, and whether they are adults or minors, must appear in any petition for distribution.

*(Adopted October 1, 1998; Rule 4.51 renumbered as 4.54 January 1, 2009; Rule 4.54 renumbered as 4.65 and amended January 1, 2022)*

#### **4.66 NOTICE TO PUBLIC ENTITIES (Probate Code section 9202)**

Before the court will authorize distribution, there must be a showing of compliance with Probate Code section 9202 with regard to notice to the Director of Health Care Services, the Director of the California Victim Compensation Board, and the Franchise Tax Board, or a showing that the notice thereunder is not required.

*(Adopted October 1, 1998; Rule 4.52 renumbered as 4.55 January 1, 2009; Amended January 1, 2010; Rule 4.65 renumbered as 4.66 and amended January 1, 2022)*

#### **4.67 DISTRIBUTION UNDER ACT**

A. Schedule of Creditor Claims. In any petition for distribution, a schedule of claims must be included as part of the petition, showing the name of the claimant, amount claimed, date presented, date allowed, the amount allowed, and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice of rejection

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with affidavit of mailing to the creditor must be on file. The notice of allowance should not be filed unless the creditor is the personal representative and/or counsel for the estate.

- B. Preliminary Distribution. Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the court to ascertain that the estate is solvent. If the court has questions concerning the propriety of a preliminary distribution, the court may require an accounting.
- C. Description of Independent Acts. In any petition for distribution, all independent acts taken without prior court approval shall be set forth and described, and an allegation made that the fifteen (15) day notice of proposed action was duly served and that no objections were received or that notice was not required. The "Notice of Proposed Action," with attached affidavit of mailing shall be on file with the court. If certain acts have been properly reported in a prior petition for distribution, and notices filed, they need not be reported again.

*(Adopted October 1, 1998; Rule 4.30 renumbered as 4.33 January 1, 2009; Rule 4.33 renumbered as 4.67 and amended January 1, 2022)*

#### **4.68 ORDER FOR DISTRIBUTION**

An order for distribution shall be written so that the full extent of the order may be determined without reference to the petition on which it is based or to other documents, such as the will. The order shall contain:

- A. The distribution of property by named beneficiary, with a detailed list describing the property to be distributed to each beneficiary. Description by reference to the inventory or petition is not acceptable. For distribution by reference to an attached exhibit, see Local Rule 4.30.
- B. For real property, the legal description, assessor parcel number, and street address, if any, shall be stated.
- C. If an intestate decedent who survived his/her spouse leaves no issue, the applicability of Probate Code sections 6402 and 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.
- D. Orders for Distribution Establishing Testamentary Trusts. See California Rules of Court, rule 7.650 for requirements.

*(Adopted October 1, 1998; Rule 4.53 renumbered as 4.56 and amended January 1, 2009; Rule 4.56 renumbered as 4.68 and amended January 1, 2022)*

#### **4.69 RECEIPTS ON DISTRIBUTION**

A receipt for property received by a beneficiary shall be signed by him/her personally. The court will not accept a receipt signed by an attorney-in-fact, except where there is a pre-existing power of attorney and a copy of the power of attorney is provided.

A receipt for property received by a beneficiary shall be specifically itemized, giving the distribution value of each asset and the total value of all property received.

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*(Adopted October 1, 1998; Rule 4.54 renumbered as 4.57 and amended January 1, 2009; Rule 4.57 renumbered as 4.69 and amended January 1, 2022)*

### **4.70 DISCHARGE OF FIDUCIARY**

The court will approve the Ex Parte Petition for Final Discharge (Judicial Council form DE-295) only after review of the filed receipts and/or declarations which document complete distribution or transfer of all property of the estate. If an order for final distribution includes a reserve and the receipts do not account for 100% of the reserve, then the party must submit a declaration explaining specifically how the reserve funds were expended.

*(Original rule adopted October 1, 1998; Income tax certificate - Repealed July 1, 2010; New rule adopted July 1, 2017; Rule 4.58 renumbered as 4.70 and amended January 1, 2022)*

### **4.71 TERMINATION OF NO-ASSET ESTATE (Probate Code section 12251)**

When filing a petition to terminate a no-asset estate, parties may use optional Local forms CI-106, Petition for Termination of Proceedings and Discharge, and CI-107, Order for Termination of Proceedings and Discharge.

*(Adopted January 1, 2022)*

### **4.72 – 4.79 RESERVED**

## **RULES COMMON TO CONSERVATORSHIPS AND GUARDIANSHIPS**

### **4.80 PERSONAL CONTACT INFORMATION**

Petitioners must provide information related to their personal residential address, home telephone number, work address, work telephone number, e-mail address, and cell phone number, if any. This information may be filed as a confidential document.

*(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2004; Amended January 1, 2007; Amended January 1, 2010; Rule 5.27(f) renumbered and re-lettered as 5.01(f) and amended July 1, 2010; Amended January 1, 2011; Amended July 1, 2012; Amended July 1, 2014; Amended July 1, 2016; Amended July 1, 2017; Rule 5.1 renumbered as 4.80 and amended January 1, 2022)*

### **4.81 NOTICE TO COURT INVESTIGATOR**

A. A copy of all documents filed in a conservatorship proceeding must be served on the court investigator. For those persons filing electronically, service on the court investigators shall be completed using one of the electronic service addresses found on the probate home page of the court's website at [www.monterey.courts.ca.gov/probate](http://www.monterey.courts.ca.gov/probate).

For those persons permitted to file paper documents, service may be completed either electronically at the court investigator's e-service address or by mail at the addresses found on the probate home page of the court's website.

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- B. A minimum of five (5) court days' notice is required for the court investigator to complete an investigation for a temporary conservatorship petition pursuant to Probate Code section 2250.6.
- C. A minimum of thirty (30) days' notice is required for the court investigator to complete an investigation for a general conservatorship petition pursuant to Probate Code section 1826. An investigation is required in all cases even if the proposed conservatee is the petitioner and will attend the hearing.
- D. A minimum of forty-five (45) days' notice is required for the court investigator to complete an investigation for a periodic review pursuant to Probate Code section 1851.

*(Rule 5.03(c) renumbered as 5.06 and amended January 1, 2009; Amended July 1, 2014; Rule 5.6 renumbered as 4.81 and amended January 1, 2022)*

#### **4.82 TEMPORARY CONSERVATORSHIPS AND GUARDIANSHIPS**

Temporary letters of conservatorship or guardianship must state an expiration date. This date shall not go beyond the date of the hearing on the permanent conservatorship or guardianship petition. If the hearing on the permanent conservatorship or guardianship is continued, new letters will be issued upon submission of an order after hearing extending the temporary conservatorship or guardianship and shall expire on the continued date of the hearing. Orders extending the temporary conservatorship or guardianship shall not be submitted on Judicial Council forms GC-141, Order Appointing Temporary Conservator, and GC-140, Order Appointing Temporary Guardian.

*(Adopted October 1, 1998; Rule 5.07 renumbered as 5.12 and amended January 1, 2009; Amended July 1, 2014; Rule 5.12 renumbered as 4.82 and amended January 1, 2022)*

#### **4.83 APPOINTMENT OF ATTORNEYS FOR CONSERVATEES AND MINORS**

When requesting appointment of counsel pursuant to Probate Code sections 1470 or 1471, the application shall state whether the public defender or private counsel should be appointed. If requesting appointment of the public defender, the application or other documents in the file (e.g., fee waiver application and order) shall also establish that the conservatee or minor is not financially able to employ counsel. Parties are encouraged to use optional Judicial Council forms GC-005, Application for Appointment of Counsel, and GC-006, Order Appointing Legal Counsel.

*(Adopted October 1, 1998; Rule 5.09 renumbered as 5.14 and amended January 1, 2009; Rule 5.14 renumbered as 4.83 and amended January 1, 2022)*

#### **4.84 BOND**

If independent powers are granted pursuant to Probate Code sections 2590 and 2591 to include the sale of real property or to encumber real property as security for a loan, the bond required by Probate Code section 2320 shall include the value of the real property less encumbrances.



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If sufficient restrictions, limitations or, conditions to adequately safeguard and secure the real property are included in the order granting the independent powers, bond need not include the value of the real property.

*(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2008; Rule 5.10 renumbered as 5.15 and amended January 1, 2009; Amended July 1, 2014; Rule 5.15 renumbered as 4.84 and amended January 1, 2022)*

#### **4.85 FIXING CONSERVATEE OR MINOR'S RESIDENCE OUTSIDE OF CALIFORNIA (Probate Code section 2352)**

- A. The court will set a review hearing four (4) months from the date of the order fixing the conservatee or minor's residence outside of California.
- B. At the review hearing, the conservator or guardian shall show proof of:
  - 1. Commencement or establishment of a conservatorship or guardianship proceeding in the other state; or
  - 2. Commencement of a petition to transfer the conservatorship to the other state (Probate Code section 2001).
- C. Upon submission of proof of establishment of a conservatorship or guardianship in the other state, the conservator or guardian shall submit a proposed order terminating the proceeding in this state.

*(Adopted October 1, 1998; Amended January 1, 2002; Amended July 1, 2004; Amended January 1, 2008; Rule 5.13 renumbered as 5.17 and amended January 1, 2009; Amended July 1, 2014; Rule 5.17 renumbered as 4.85 and amended January 1, 2022)*

#### **4.86 SUBSTITUTED JUDGMENT (Probate Code sections 2580-2586)**

- A. Petitions requesting substituted judgment shall include as a confidential supplement all known estate planning documents related to the petition. Confidential documents may be sealed to maintain confidentiality.
- B. The petition shall include the names of all persons to whom property would pass by intestacy. The petition shall also include a statement of the nature and number of existing claims of creditors against the conservatorship estate.
- C. When creating a trust pursuant to the petition for substituted judgment, the bond required by California Rules of Court, rule 7.903(c)(5) shall include the value of real property.

*(Adopted October 1, 1998; Rule 5.15 renumbered as 5.20 January 1, 2009; Amended July 1, 2014; Rule 5.20 renumbered as 4.86 and amended January 1, 2022)*

#### **4.87 – 4.89 RESERVED**

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#### **CONSERVATORSHIPS**

#### **PETITIONS FOR CONSERVATORSHIP**

#### **4.90 PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ONLY**

- A. For a petition for appointment of probate conservator of the person only, petitioner shall by declaration indicate why a conservatorship of the estate is not necessary.
- B. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has a trust, petitioner shall identify:
  - 1. All trusts, including all amendments that may or may not have been revoked by the subsequent documents;
  - 2. The proposed conservatee's interest in the trust; and
  - 3. The name of the trustee and/or successor trustee.
- C. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has executed powers of attorney, petitioner shall provide the identity of the named agent and a copy of the power of attorney.

*(Rule 5.03 previously adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Renumbered as 5.04, 5.05, 5.06, 5.07, and 5.08 January 1, 2009; New Rule 5.03 adopted January 1, 2009; Amended July 1, 2014; Amended July 1, 2016; Rule 5.3 renumbered as 4.90 and amended January 1, 2022)*

#### **4.91 REQUIRED DOCUMENTS FOR APPOINTMENT OF CONSERVATOR**

The following documents are required to be filed with the petition for appointment of conservator, in addition to forms required by the Probate Code and California Rules of Court, rules 7.1050 and 7.1051:

- A. Where appointment of counsel is required or requested, parties shall comply with Local Rule 4.83. An ex parte application and order for appointment of counsel should be submitted when the petition is filed to avoid continuance or delay.
- B. Referral to Court Investigator - Confidential (Local form CI-123).
- C. Order Appointing Court Investigator (Judicial Council form GC-330) directed to the appropriate investigator per the probate home page of the court's website at [www.monterey.courts.ca.gov/probate](http://www.monterey.courts.ca.gov/probate). The appropriate boxes on the order should be selected.
- D. For a limited conservatorship petition, when Attachments 1h, 1i, and/or 1j are required, parties are encouraged to use optional Local forms CI-144 and CI-145.

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- E. Order Appointing Probate Conservator (Judicial Council form GC-340). For a limited conservatorship order, parties are encouraged to use optional Local forms CI-146 and CI-147, if applicable.

*(Rule 5.03(e) renumbered as 5.07 and amended January 1, 2009; Amended July 1, 2009; Amended July 1, 2013; Amended July 1, 2014; Amended July 1, 2017; Rule 5.7 renumbered as 4.91 and amended January 1, 2022)*

#### **4.92 LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIPS**

- A. Petition Requirements. If a proposed conservatee is under an LPS conservatorship, the petition for appointment of probate conservator shall include the number of the case, the name of the conservator, and the LPS court's findings regarding voting.
- B. Notice. Notice shall be given to the LPS conservator in the same manner as that given to relatives in the second degree.

*(Adopted October 1, 1998; Amended January 1, 2009; Rule 5.11 renumbered as 4.92 and amended January 1, 2022)*

#### **4.93 HEARING AND APPOINTMENT OF CONSERVATOR**

- A. The court investigator's report shall be filed with the court at least fifteen (15) calendar days in advance of the hearing, unless extended by the court.
- B. The proposed conservatee must attend the hearing except where excused pursuant to Probate Code section 1825.
1. The proposed conservatee must come forward to the counsel table where the court may inquire of and advise the proposed conservatee as required by Probate Code section 1828 or, in the case of a limited conservatorship, Probate Code section 1828.5.
  2. If there has been a nomination and/or waiver of bond filed, executed by the proposed conservatee, the court shall satisfy itself that they had the capacity to execute and understand the nature and significance of such documents.
  3. The proposed conservatee shall personally respond to any court inquiry. A statement by counsel that the conservatee is present and does not object is not sufficient.
  4. The above requirements also apply where the proposed conservatee is the petitioner.
- C. Before Letters shall be issued to the conservator of the person or estate, the conservator must view the video "With Heart: Understanding Conservatorship." Unless the conservator is a licensed professional conservator, they must execute and file the requisite acknowledgment of viewing, Conservator Viewing Receipt (Local form CI-134), required pursuant to Probate Code section 1457. The video may be viewed online at [www.courts.ca.gov/selfhelp-conservatorship.htm](http://www.courts.ca.gov/selfhelp-conservatorship.htm), at your attorney's office, a Self-Help Center, or at the Monterey Superior Court with payment of a fee to view at the courthouse.

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A guide to community resources helpful to conservators is published by the Monterey County Area Agency on Aging and may be found on-line at <https://flipbook.montereycountyweekly.com/archive/2020/special/senior-guide/#mcw-1> (English). [A version in Spanish may be found at <https://flipbook.montereycountyweekly.com/archive/2020/special/senior-guide/#mcw-1>]

*(Adopted October 1, 1998; Rule 5.08 renumbered as 5.13 and amended January 1, 2009; Amended July 1, 2016; Amended July 1, 2017; Rule 5.13 renumbered as 4.93 and amended January 1, 2022)*

#### **4.94 NOTICE OF CHANGE OF ADDRESS**

Conservators shall file with the court and serve upon the court investigator:

- A. Written notice of any change of their address, or the address of their conservatees, within thirty (30) days of the change of address in compliance with Probate Code section 2352 and California Rules of Court, rule 7.1063; and
- B. Referral to Court Investigator – Confidential (Local form CI-123). Failure to comply may result in suspension or removal.

*(Adopted October 1, 1998; Rule 5.16 renumbered as 5.21 January 1, 2009; Amended July 1, 2014; Amended July 1, 2017; Rule 5.21 renumbered as 4.94 and amended January 1, 2022, Renumbered subdivisions to (A) and (B) from (1) and (2) January 1, 2023.)*

#### **4.95 – 4.99 RESERVED**

### **COURT REVIEWS, ACCOUNTS AND STATUS REPORTS**

#### **4.100 COURT REVIEWS (Probate Code section 1850)**

- A. Conservatorships of the estate and conservatorships of the person and estate will be set for court review at a hearing one year after the appointment of a conservator and every two years thereafter, unless otherwise ordered.
- B. Conservatorships of the person only will be reviewed by the court investigator one year after the appointment of a conservator and every two years thereafter, unless otherwise ordered. Upon receipt of the investigator's report, the court may order the matter set for court review at a hearing.

*(Adopted January 1, 2022)*

#### **4.101 ACCOUNTS AND ACCOUNTING**

- A. The conservator of the estate shall file an accounting and petition for its approval with each court review. The conservator of the person, if any, shall file a Confidential Status Report with each court review.

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- B. The Confidential Status Report shall address the current physical/medical condition of the conservatee; the current level of care; any anticipated changes in residence and/or level of care, and reason(s) for change; any involvement of family and friends of the conservatee; and any unusual circumstances related to the conservatee and/or conservatorship of the estate. The report shall be a separate document from the petition.
- C. All conservator accountings shall be filed and served on the court investigator at least forty-five (45) days prior to the scheduled review hearing date. If a conservator is unable to file the accounting at least 45 days prior to the hearing date, a request for continuance of the hearing should be submitted using Local form CI-105, Request for Continuance of Hearing & Order.
- D. The conservator of the estate shall file a Referral to Court Investigator – Confidential (Local form CI-123) with each accounting.
- E. The supporting documentation lodged pursuant to Probate Code section 2620 and California Rules of Court, rule 7.565 will be retained by the court pending approval of the conservator's accounting. These documents shall be submitted with a Confidential Financial Documents Caption Sheet (Local form CI-126). Parties are to follow the instructions on the local form. Upon approval of the accounting, any paper lodged documents will either be returned to the submitting party or destroyed as designated on the local form
- F. Upon appointment of a conservator and/or approval of conservator accountings, the court will set the next review hearing. Notice of the next hearing date will be provided in the courtroom and stated in the minute order, only. No “Notice of Court Review” will be mailed by the court.

*(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008; Rule 5.17 renumbered and re-lettered as 5.23; subd. (d) added; Amended January 1, 2009; Amended January 1, 2011; Amended (repealed financial documents caption sheet) July 1, 2012; Amended July 1, 2014; Amended January 1, 2016; Amended July 1, 2017; Rule 5.23 renumbered as 4.101 and amended January 1, 2022)*

#### **4.102 FINAL ACCOUNTS**

- A. No later than ninety (90) days after termination of the conservatorship of the estate, the conservator shall file a final accounting and petition for its approval. The petition shall request authority for disposition of the assets.
- B. If a probate proceeding has already been initiated for a deceased conservatee, the petition shall state the caption, case number, county where filed, and the name of the petitioning party.
- C. Notice of the hearing on the petition must be given to the personal representative, if any, of a deceased conservatee.
- D. A court investigation is not required for the final accounting, unless otherwise ordered.

*(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.20 renumbered as 5.26 January 1, 2009; Amended July 1, 2014; Rule 5.26 renumbered as 4.102 and amended January 1, 2022)*

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#### **4.103 WAIVER OF ACCOUNT FOR SMALL ESTATES (Probate Code § 2628)**

- A. An application for waiver of account shall be presented each time an accounting would otherwise be due. Conservator shall also file:
  - 1. A Confidential Status Report as required by Local Rule 4.101(A); and
  - 2. A Referral to Court Investigator - Confidential (Local form CI-123).
- B. The order waiving an accounting must be served on the court investigator at least thirty (30) days prior to the hearing on the court review.

*(Adopted October 1, 1998; Rule 5.22 renumbered as 5.28 January 1, 2009; Amended January 1, 2011; Amended July 1, 2014; Rule 5.28 renumbered as 4.103 and amended January 1, 2022)*

#### **4.104 CONSERVATEE – BENEFICIARY OF A TRUST**

Where a conservatee is a beneficiary of a trust not established pursuant to Probate Code section 2580:

- A. A copy of the trust agreement shall be provided to the court investigator upon request;
- B. At the time of each court review a verified summary showing the following shall be filed as a confidential document:
  - 1. The principal amount of the trust estate;
  - 2. A description of conservatee's beneficial interest in the trust;
  - 3. The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal; and
  - 4. The name, address, and telephone number of the trustee.
- C. Any income required by the trust instrument to be distributed to the conservatee is conservatorship income and it must be included in an accounting to the court pursuant to these rules and Probate Code section 2620.

*(Adopted October 1, 1998; Rule 5.23 renumbered as 5.29 January 1, 2009; Rule 5.29 renumbered as 4.104 and amended January 1, 2022)*

#### **4.105 – 4.109 RESERVED**

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#### **RESIGNATION AND REMOVAL OF CONSERVATOR**

##### **4.110 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR; FINAL ACCOUNT AND DISCHARGE**

- A. Effective Date of Resignation. The conservator may resign at any time, but the resignation is not effective and will not be approved until the appointment of a successor conservator.
- B. Contemporaneous Petition to Appoint Successor. A petition for resignation should be filed contemporaneously with a petition for appointment of a successor conservator, provided that the consent of the successor conservator is filed prior to or at the time of hearing.
- C. Final Account. A final account of the resigning conservator and/or a petition for fees upon resignation cannot be approved until a successor is appointed and is served with notice of hearing and a copy of the account and/or petition.
- D. At the hearing for appointment of successor conservator, the same procedural requirements apply as for the initial appointment of conservator. (See Local Rules 4.90 and 4.91)
- E. The successor conservator of the estate shall not account for the period prior to his/her appointment, except as provided in Probate Code section 2632, and the predecessor shall not be discharged until all of the following are accomplished:
  - 1. Approval of predecessor's final account including the period up to the appointment of the successor and delivery of assets;
  - 2. The filing of a receipt, executed by the successor conservator, acknowledging delivery and receipt of the assets as reflected in the "Assets on Hand" in the final account; and
  - 3. If any assets were received and/or expenses paid since the final account period, the predecessor conservator shall include with their petition for discharge a declaration explaining what assets were received and/or expenses paid following the final account period and showing that all remaining assets were distributed to the successor conservator.

*(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 5.24 renumbered as 5.30 and amended January 1, 2009; Amended July 1, 2014; Rule 5.30 renumbered as 4.110 and amended January 1, 2022)*

##### **4.111 COURT INVESTIGATOR FEES (Probate Code section 1851.5)**

- A. Unless a fee waiver order is on file, the court investigator fee must be paid at the time the petition is filed in the following instances: appointment of probate conservator, appointment of temporary conservator, and approval of an account (unless following the death of the conservatee). If the conservator believes the fees should be deferred due to hardship, the subject petition shall include a request for deferral and shall set forth facts to establish a hardship.

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- B. Upon termination of the conservatorship, any court investigator fees previously deferred are nonetheless due and payable, except under either of the following conditions:
1. The conservatee is still living and payment of all or a portion should be waived based upon hardship to the conservatee; or,
  2. The conservatee's estate has no assets with which to pay all or a portion of the assessments due. Hardship is not a consideration where the conservatee is deceased.
- C. The order approving final account of conservator will not be granted until the court investigator fees are either paid or waived by the court.

*(Adopted October 1, 1998; Amended July 1, 2004; Rule 5.27 renumbered as 5.33 January 1, 2009; Amended January 1, 2010; Rule 5.33 renumbered as 4.111 and amended January 1, 2022)*

#### **4.112 – 4.119 RESERVED**

### **GUARDIANSHIPS**

#### **4.120 APPOINTMENT OF GENERAL GUARDIANS**

- A. Petition for appointment of guardians shall be accompanied by a Confidential Declaration Regarding Household Members (Local form CI-130).
- B. Single Application for Multiple Minors. The court will consider a single application for appointment of the same guardian of the person or estate, or both, of more than one (1) minor, if the minors are siblings. In all other instances separate applications must be filed.
- C. The court investigator fee must be paid within 10 days after the court orders the court investigation, unless the Court approves a fee waiver. (See California Rules of Court, rule 7.5) If the petitioner believes the fees should be deferred due to hardship, the petition shall include a request for deferral of the fee and shall set forth facts to establish a hardship.
- D. Order Appointing Guardian (Judicial Council form GC-240). When the court appoints a guardian of the person, the order must include mandatory Local form CI-149, Attachment 15 (Person). When the court appoints a guardian of the estate, the order must include mandatory Local form CI-150, Attachment 15 (Estate).

*(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.29 renumbered as 5.35 January 1, 2009; Amended January 1, 2010; Amended July 1, 2014; Amended July 1, 2017; Rule 5.35 renumbered as 4.120 and amended January 1, 2022)*

#### **4.121 DUTIES OF GUARDIAN - LIABILITY OF PARENTS TO SUPPORT CHILD**

Parents are required by statute to support their children. (See Family Code section 3900 *et seq.*) Where a parent is also the guardian of the estate, the court will not permit guardianship funds to be used for the minor's maintenance, support, or education except upon a showing of extraordinary circumstances as being in the best interest of the minor.



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*(Adopted October 1, 1998; Rule 5.32 renumbered to 5.38 January 1, 2009; Rule 5.38 renumbered to 5.37 July 1, 2017; Rule 5.37 renumbered as 4.121 and amended January 1, 2022)*

#### **4.122 ACCOUNTS OF GUARDIANS (Probate Code section 2620)**

- A. Multiple Wards. When a guardian accounts for the assets of more than one (1) minor, the accounting for each minor must be set forth individually.
- B. The supporting documentation lodged pursuant to Probate Code section 2620 and California Rules of Court, rule 7.575 will be retained by the court pending approval of the guardian's accounting. These documents shall be submitted with a Confidential Financial Documents Caption Sheet (Local form CI-126). Parties are to follow the instructions on the local form. Upon approval of the accounting, any paper lodged documents will either be returned to the submitting party or destroyed as designated on the local form.
- C. Upon appointment of a guardian and/or approval of guardian accountings, the court will set the next court review hearing. Notice of the next hearing date will be provided in the courtroom and stated in the minute order, only. No "Notice of Court Review" will be mailed by the court.

*(Adopted October 1, 1998; Amended January 1, 2001; Rule 5.33 renumbered and amended as 5.39 January 1, 2009; Amended July 1, 2014; Rule 5.39 renumbered to Rule 5.38 July 1, 2017; Rule 5.38 renumbered as 4.122 and amended January 1, 2022)*

#### **4.123 ANNUAL REVIEW OF GUARDIANSHIPS (Probate Code section 1513.2)**

Each guardian of the person shall file with the court a completed Confidential Guardianship Status Report (Judicial Council form GC-251) every year, as directed by the court. The status report shall include a current note from the doctor and dentist confirming the minor was seen within the past twelve months, as well as current report cards and school attendance records covering a 12-month period for each minor. If the status report is complete with the required attachments and the court has no questions to ask the guardian, the court will send the guardian an order approving the status report, along with a blank status report to complete in one year. The guardian must then file the next status report by the deadline stated in the order. If the status report is not filed or is incomplete, the court will send the guardian a notice requesting the missing information. The court may direct the guardian to appear for hearing. Guardian should check the probate notes on the court's website ([www.monterey.courts.ca.gov/probate](http://www.monterey.courts.ca.gov/probate)) prior to the hearing.

*(Adopted January 1, 2009; Amended July 1, 2014; Amended July 1, 2017; Rule 5.40 renumbered as 4.123 and amended January 1, 2022)*

#### **4.124 – 4.129 RESERVED**

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### SALES IN DECEDENTS' ESTATES, CONSERVATORSHIPS, AND GUARDIANSHIPS

#### 4.130 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

- A. Required Notice for Executors. Unless a will specifically grants an executor, as distinguished from an administrator with will annexed, the authority to sell without notice (Probate Code section 10303), a publication of notice of sale of real property is required.
- B. Content of Notice (Probate Code § 10304). The notice of sale of real property must substantially comply in its content with the following example:

“NOTICE IS HEREBY GIVEN that, subject to confirmation of this court on (insert date, time and department), or thereafter within the time allowed by law, the undersigned as (administrator, executor, conservator, or guardian) of the estate of the above named (decedent, conservatee, or minor), will sell at private sale to the highest net bidder, on the terms and conditions hereinafter mentioned, all right, title, and interest that the estate has acquired in addition to that of the (decedent, conservatee, or minor) at the time of death, in the real property located in Monterey County, California, as follows:

(Insert Legal Description of Property here.) APN:

This property is commonly referred to as (insert address here) and includes (insert any fixture included in the price).

The sale is subject to current taxes, covenants, conditions, restrictions, reservations, right of way and easements of record, with any encumbrances of record to be satisfied from the purchase price.

The property is to be sold on an “as is” basis, except for title.

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert administrator, executor, conservator, or guardian) 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 (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, executor, conservator, or guardian) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

- The property will be sold on the following terms (insert all applicable terms).

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- The undersigned reserves the right to refuse to accept any bids.
- C. Time. If notice of sale is published, any sale must be in accordance with its terms. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed, and new notice of sale must be published. Pursuant to Probate Code section 10308, any petition for confirmation of sale must allege that the sale was made within thirty (30) days prior to the date on which the petition was filed. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.
- D. Terms of Sale. The published notice of sale of real property constitutes a solicitation for offers. The terms of the solicitation must be substantially similar to the terms of the accepted offer that is the subject of the report of sale and petition for order confirming sale of real property. Published terms of the solicitation cannot be more onerous than the terms of the accepted offer.
- E. Executor's Defect in Notice. If an executor publishes a notice of sale of real property and proceeds with that sale and later a technical defect appears, this defect cannot be cured by the executor's power of sale given in the will. The publication constitutes an election by the executor to sell by means of publication of notice.

*(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.35 renumbered as 4.38 January 1, 2009; Amended July 1, 2013; Rule 4.38 renumbered as 4.130 and amended January 1, 2022)*

### **4.131 CONFIRMING SALE OF REAL PROPERTY (Probate Code sections 10300 to 10316)**

- A. Contract for Sale. The real estate purchase agreement or other contract of sale shall be attached to the report of sale and petition for order confirming sale of real property.
- B. Appearances of Counsel. In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney, except in those cases where the personal representative, guardian, or conservator is present and requests that the sale proceed.
- C. Sale Contingencies. Except in exceptional circumstances, all contingencies contained within the real estate purchase agreement, with the exception of court confirmation itself, shall be removed prior to the date of the confirmation hearing. Before the sale is confirmed, counsel shall state for the record that this requirement has been satisfied. Where exceptional circumstances exist to justify a waiver of this requirement, counsel will obtain ex parte authorization to proceed prior to filing the petition.
- D. Continuances. Sale confirmations will be continued only under the most exceptional circumstances. A motion for continuance must be made in open court.

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- E. Probate Code section 10308 requires that notice be given “to the purchasers named in the petition...”

*(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.36 renumbered as 4.39 January 1, 2009; Rule 4.39 renumbered as 4.131 and amended January 1, 2022)*

#### **4.132 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY**

Where full independent powers have not been granted, Probate Code section 10150 permits a fiduciary to grant an exclusive listing for a period not to exceed ninety (90) days after obtaining the permission of the court. To obtain such permission, the fiduciary must file an ex parte application setting forth, in detail, the property to be sold, the broker to be employed, the terms of the exclusive listing agreement, and the factual reasons why such agreement is necessary and advantageous to the estate. A bare statement of "necessity and advantage" will not suffice.

In all cases, the ex parte order shall provide that a reasonable broker's commission, if any, will be determined by the court at the time of confirmation of sale.

*(Adopted October 1, 1998; Rule 4.37 renumbered as 4.40 January 1, 2009; Rule 4.40 renumbered as 4.132 and amended January 1, 2022)*

#### **4.133 BOND ON SALE OF REAL ESTATE**

Petitions for confirmation of sale of real estate shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond (as provided in Probate Code sections 2320, 2330, and 8482) at the close of escrow. If no additional bond is required, or if bond is waived, that fact must be alleged. A secured promissory note taken as part of the consideration is personal property, and an additional bond must be fixed in the amount of such note plus whatever cash is paid. If additional bond is ordered, it must be filed prior to obtaining the court's signature on the order confirming sale.

*(Adopted October 1, 1998; Rule 4.38 renumbered as 4.41 January 1, 2009; Rule 4.41 renumbered as 4.133 and amended January 1, 2022)*

#### **4.134 BROKER'S COMMISSIONS – GENERAL RULE**

- A. The order confirming sale must show the total commissions allowed and any allocation agreed upon between brokers.
- B. Upon confirmation of the sale of improved real property, the court will not allow a broker's commission in excess of six percent (6%), unless justified by exceptional circumstances. A commission of up to ten percent (10%) may be allowed for the sale of raw land.
- C. A commission exceeding the normal schedule will be allowed only under the most unusual circumstances. Whenever possible, the written agreement of the affected beneficiaries should be obtained.
- D. A broker bidding for his own account is not entitled to receive or share in a commission. (*Estate of Toy* (1977) 72 Cal.App.3d 392.)

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*(Adopted October 1, 1998; Rule 4.39 renumbered as 4.42 January 1, 2009; Rule 4.42 renumbered as 4.134 January 1, 2022)*

#### **4.135 DISPUTES ABOUT BROKERS' COMMISSIONS**

Normally disputes concerning broker's commissions will be referred to the appropriate Board of Realtors for arbitration.

*(Adopted October 1, 1998; Rule 4.40 renumbered as 4.43 January 1, 2009; Rule 4.43 renumbered as 4.135 January 1, 2022)*

#### **4.136 TANGIBLE PERSONAL PROPERTY**

Commissions on sales of tangible personal property will be allowed only to individuals holding a broker's license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the court's discretion and will be determined on a case-by-case basis.

*(Adopted October 1, 1998; Rule 4.44 renumbered as 4.47 January 1, 2009; Rule 4.44 renumbered as 4.136 and amended January 1, 2022)*

#### **4.137 SALE OF SPECIFICALLY DEvised PROPERTY**

On a sale of specifically devised real or personal property, fifteen (15) days' notice of time and place of hearing of the return of sale must be given to the beneficiary, unless their consent to such sale is filed with the court.

*(Adopted October 1, 1998; Rule 4.42 renumbered as 4.45 January 1, 2009; Rule 4.45 renumbered as 4.137 and amended January 1, 2022)*

#### **4.138 SALE OF REAL PROPERTY WITH INDEPENDENT POWERS (CONSERVATORSHIPS / GUARDIANSHIPS)**

If real property is sold pursuant to Probate Code section 2591, subdivision (c), the sales price may not be less than ninety percent (90%) of the appraised value determined by the probate referee within one (1) year prior to sale, unless otherwise authorized by the court.

*(Adopted January 1, 2022)*

#### **4.139 – 4.149 RESERVED**

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#### **TRUSTS**

##### **4.150 TRUSTEES' ACCOUNTS (Probate Code sections 16062 – 16064; California Rules of Court, rules 7.901 - 7.903)**

Unless a trust is subject to court supervision (see California Rules of Court, rule 7.903), the court will order an accounting and report by a trustee only when an account is requested by someone beneficially interested in the trust. (Probate Code section 17200, subdivision (b)(5).)

*(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.65 renumbered as 4.68 and amended January 1, 2009; Rule 4.68 renumbered as 4.150 and amended January 1, 2022)*

##### **4.151 – 4.159 RESERVED**

##### **COMPENSATION OF FIDUCIARIES AND ATTORNEYS (Probate Code sections 2640 through 2647, 10800 through 10832, 16243; California Rules of Court, rules 7.700 through 7.776)**

##### **4.160 COMPENSATION OF ATTORNEYS AND PARALEGALS**

- A. In reviewing requests for compensation of attorneys and paralegals, the court considers the amounts historically and customarily allowed in the community.
1. For services provided beginning January 1, 2022, the custom shall be to consider approval of attorney fees of up to \$400 per hour and paralegal fees of up to \$175 per hour.
  2. For services provided from July 1, 2017 to December 31, 2021, the custom shall be to consider approval of attorney fees of up to \$350 per hour and paralegal fees of up to \$150 per hour.
  3. For services provided prior to July 1, 2017, the custom shall be to consider approval of attorney fees of up to \$200-\$300 per hour and paralegal fees of up to \$85-\$125 per hour.
- B. The court shall consider the skill level of the attorney and paralegal and/or the complexity of the legal issues when determining an appropriate fee. The court expects the attorneys to monitor their billing request to avoid seeking attorney compensation for overhead tasks or for researching to become competent to handle the matter.
- C. The court will not automatically allow the maximum rates set forth herein. Fee requests will be considered on a case by case basis. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. The court has discretion to require further justification for all attorney fees.
- D. Trusts (Probate Code section 16243). Requests for approval of attorney fees for trustee representation will be considered according to the work actually performed. Requests 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.

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- E. Conservatorships/Guardianships (Probate Code §§ 2640 *et seq.*). Requests for attorney fees shall include information required by California Rules of Court, rule 7.751, and will be considered in accordance with Probate Code section 2640 *et seq.*

*(Rules 4.65, 4.71, 5.27, and 5.39 renumbered 4.160 and amended January 1, 2022)*

#### **4.161 USE OF PARALEGALS (Probate Code sections 2642(a), 8547(d), 10811(b), and 10953(d))**

Requests for fees for paralegal services shall comply with California Rules of Court, rule 7.703(e).

*(Adopted October 1, 1998; Rule 4.63 renumbered as 4.66 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017; Rule 4.66 renumbered as 4.161 and amended January 1, 2022)*

#### **4.162 COMPENSATION OF COURT-APPOINTED COUNSEL IN CONSERVATORSHIPS AND GUARDIANSHIPS**

Fees for legal counsel appointed by the court to represent the conservatee/minor may be requested and included in the order appointing conservator/guardian. After appointment of a conservator/guardian, counsel for conservatee/minor may request fees by their own noticed petition or by submitting a declaration and proposed order for fees for hearing at an already-scheduled hearing.

*(Rule 5.27(B) renumbered 4.162 and amended January 1, 2022)*

#### **4.163 COMPENSATION OF FIDUCIARIES (CONSERVATORS, GUARDIANS, TRUSTEES)**

A. In reviewing requests for compensation of fiduciaries, the court considers the amounts historically and customarily allowed in the community.

B. Licensed Professional Fiduciaries, Attorneys, Certified Public Accountants.

1. For services provided beginning January 1, 2022, the custom shall be to consider approval of up to \$150 per hour for the fiduciary and \$85 per hour for staff.
2. For services provided from July 1, 2017 to December 31, 2021, the custom shall be to consider approval of fees of up to \$120 per hour for the fiduciary and \$85 per hour for staff.
3. For services provided prior to July 1, 2017, the custom shall be to consider approval of fees of up to \$85 per hour for the fiduciary and \$45 per hour for staff.

C. Non-Professional Non-Family Fiduciaries.

1. For services provided beginning January 1, 2022, the custom shall be to consider approval of up to \$50 per hour for the fiduciary.
2. For services provided prior to January 1, 2022, the custom shall be to consider approval of up to \$45 per hour for the fiduciary.

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- D. Non-Professional Family Fiduciaries.
1. For services provided beginning January 1, 2022, the custom shall be to consider approval of up to \$30 per hour for the fiduciary.
  2. For services provided prior to January 1, 2022, the custom shall be to consider approval of up to \$25 per hour for the fiduciary.
- E. Corporate Fiduciaries. Corporate fiduciaries will be allowed compensation based on their contractual fee schedule, subject to court approval for reasonableness.
- F. 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., for conservators: sitting at the bedside of an ill conservatee; for guardians: transporting minors, going to school functions, etc.). See Local rule 4.121 – parents are required to support their children. However, the court may take into consideration the timing of such activities and whether the activities took the fiduciary away from their normal income-producing activities.
- G. 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.
- H. The court will not automatically allow the maximum rates set forth herein. Fee requests will be considered on a case by case basis. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. The court has discretion to require further justification for all fiduciary fees.
- I. Trustees. Requests for court approval of trustee fees, including settling an account, shall include information addressing the factors stated in California Rules of Court, rule 7.776, and will be considered in accordance with Probate Code section 15680 *et seq.* Court approval must first be obtained in all instances where compensation is not expressly authorized in the trust instrument, including corporate trustees with a contractual fee schedule.
- J. Conservatorships/Guardianships (Probate Code §§ 2640 *et seq.*). Requests for conservator/guardian fees shall include information required by California Rules of Court, rules 7.751 and 7.756, and will be considered in accordance with Probate Code section 2640 *et seq.*

*(Rules 4.65, 4.70, 5.27, and 5.39 renumbered 4.163 and amended January 1, 2022)*

### **4.164 EXCLUSION OF SECRETARIAL AND OVERHEAD SERVICES AND COSTS**

- A. Fees will not be allowed for matters which are overhead or secretarial in nature. Examples of overhead: secretarial and word processing time; time spent scanning, copying, or filing documents; calendaring hearings; local travel; and non-local travel for court appearance when a remote appearance is appropriate. Ordinarily, no more than one (1) hour will be allowed for a court appearance in uncontested matters.



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B. Reimbursement will not be allowed for costs that are overhead in nature. Examples of overhead: cost of scanning, faxing, and telephone service charges; office supplies; computer research (Lexis, Westlaw); and mileage and parking.

*(Rules 4.65, 5.27, and 5.39 renumbered 4.164 and amended January 1, 2022)*

#### **4.165 EXTRAORDINARY COMPENSATION IN DECEDENTS' ESTATES**

Ordinarily, extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See *Estate of Trynin* (1989) 49 Cal.3d 868, 874.)

*(Rule 4.65(B) renumbered 4.165 and amended January 1, 2022)*