

Chapter 3

Appointment of Personal Representatives

Rule 603.01 Special Letters of Administration

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

Petitions for special letters of administration may be applied for on an ex parte basis, however, they ordinarily will not be granted without a written notice (five day personal service) to (or written waiver of notice by) the surviving spouse, the person nominated as executor, any person of higher or equal priority as administrator, or any other person who appears to the court to be equitably entitled to notice.

For procedures for applying for appointment for a special administrator, go to www.occourts.org , click on Probate, then click on ex parte procedures.

In making the appointment, preference is ordinarily given to the person entitled to letters testamentary or of administration, but if it appears that a bona fide dispute or contest exists, the court may require appointment of a neutral party as special administrator, upon filing of a proper petition. All heirs and devisees must be listed as set forth in Rule 603.04.

The need for appointment and special powers requested should be set forth with particularity in the attachments to the petition. The special powers should be included in the attachment to the petition and included in the proposed order.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 603.02 Wills and Codicils as Exhibits to Petition

When a petition for probate of will or codicil is filed, the original of the instrument being offered for probate shall be filed prior to or concurrently with the petition, and a copy of the instrument marked as an exhibit shall be attached to the petition. If the original of the instruments being offered for probate has been lost or destroyed, the petition for probate shall include a declaration regarding the circumstances of the inability to file the original instrument.

If the instrument is holographic or handwritten, a typewritten copy of the instrument must also accompany the petition. (See Probate Code section 8002(b)(1). If the instrument is written in a language other than English, it must be accompanied by a copy translated into English and a declaration that the copy is a true translation. (See Probate Code section 8002(b)(2). The declaration shall describe the qualifications of the translator and be signed by the translator.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

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Rule 603.03 Declinations and Consents to Serve

If the person or entity named as personal representative in the decedent's will declines to act as such, then a written declination to act, signed by the person or entity must be filed with the court. If the written declination is not filed, the petition should indicate the reason. Where a petition seeks the appointment as personal representative of one or more persons who are not petitioners, a consent to serve as personal representative must be filed for each non-petitioning proposed personal representative.

(Adopted effective July 1, 1992)

Rule 603.04 Allegations in Petitions re Heirs or Devisees

In petitions for probate of will or for letters of administration, the existence or nonexistence of all separate property and community property heirs or classes of heirs who might be entitled to share in the distribution of the estate should be specifically alleged, whether the estate consists of separate or community property or both.

The nominated trustee of a trust created by a will or a custodian designated for a minor in a will shall be listed as a devisee. If the will presented for probate has a "pour over" provision to a living trust, each trustee shall be listed as a devisee. A beneficiary of either a living or testamentary trust is not a devisee and need not be listed unless the personal representative and the trustee are the same person or there is no trustee. (Probate Code section 1208)

If an heir or devisee dies after the decedent and a personal representative has been appointed, the name of the deceased heir or devisee should be listed with a notation that the person is deceased in the list of heirs and devisees. This should be followed by the name and address of the personal representative. For example: John Doe (deceased) / Jack Smith, Executor of the estate of John Doe, 123 Main Street, Everytown, CA 90000. Notice of hearing must be served by mail at least 15 days before the hearing on the personal representative. If no personal representative has been appointed, the heir or devisee should be listed as deceased and an allegation made that no personal representative has been appointed. In such event, no notice need be given by mail on behalf of that heir or devisee.

All heirs and devisees, including contingent devisees, must be listed in the petition so they will receive notice by mail of the hearing. This includes persons provided for in the original will but whose legacies have been revoked in a subsequent codicil.

When second generation heirs are listed, the deceased ancestor through which they take shall be named, along with the deceased ancestor's relationship to the decedent.

When listing an heir or devisee who is a minor, the minor's date of birth should be indicated so that it can be ascertained if the minor will attain majority during administration.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 603.05 Allegations in Petitions re Pour Over to Trust

If the will presented for probate has a "pour over" provision to a trust (other than a trust created in the instrument being offered for probate), the petition for probate must allege whether such trust was executed after, before or concurrently with the execution of the testator's will or

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relevant codicil and whether said trust was thereafter revoked or not. (See Probate Code section 6300)

(Adopted effective July 1, 1992)

Rule 603.06 Request for Authority to Administer Estate under the Independent Administration of Estates Act

If authority is requested to administer the estate under the Independent Administration of Estates Act at the time a petition for probate is filed and the notice published does not so state, the deficiency may not be corrected without a new publication. The court will either continue the matter for republication or deny the request for Independent Administration of Estates Act powers without prejudice.

(Adopted effective July 1, 1992)

Rule 603.07 Statement of Address of Nonresident Personal Representative

Probate Code section 8573 requires a nonresident personal representative to file with the court a statement setting forth his or her permanent address and any subsequent change of address. If this has not been done and anyone questions the representative's handling of the estate, the court on its own motion may, and often will, undertake proceedings for removal of the personal representative.

(Adopted effective July 1, 1992)

Rule 603.08 Petitions for Probate Subsequent to Published Notice

The first published and mailed Notice of Petition to Administer under Probate Code section 8100 is sufficient to include all instruments which are offered for probate and specifically referred to in the petition for which notice is given. Any other wills or codicils must be presented to the court by way of an amended petition or a second petition, and a new notice must be published and mailed. The shortened Notice of Petition to Administer provided for in Probate Code section 8125 should only be used when letters granting general powers have already issued.

(Adopted effective July 1, 1992)

Rule 603.09 Notice to Foreign Consuls

Notice must be given to a recognized diplomatic or consular official as required under Probate Code section 8113. If a devisee or heir is an American citizen residing in a foreign country, that fact should be alleged and notice to the diplomatic or consular official is not required.

Whether a country has recognized diplomatic or consular representation in the United States may be ascertained from the United States Department of State. A listing of the foreign consular offices in the United States is available at the Probate Division of the offices of the Clerk of the Court.

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Rule 603.10 Notice to Public Administrator

In petitions for probate of will or for letters of administration, if it is not clear from the face of the pleadings that the nominated personal representative is entitled to priority of appointment over the Public Administrator under Probate Code sections 8441 through 8467, the Court will require 15 day mailed notice to be given to the Orange County Public Administrator, P.O. Box 11526, Santa Ana, California 92711.

(Adopted effective July 1, 1992)

Rule 603.11 Proof of Wills by Affidavit or Declaration

If the attestation clause in a formal will contains allegations that satisfy the provisions of Probate Code section 6113 and is signed under penalty of perjury in accordance with Code of Civil Procedure section 2015.5, then the will is self-proving in uncontested proceedings and can be admitted to probate without an affidavit or declaration by a subscribing witness. If any alterations appear on the will, evidence of when they were made and by whom must be presented.

In uncontested proceedings, wills that are not self-proving must be proved by use of the Judicial Council form rather than by testimony.

If the photocopy of the will attached to the declaration has been made by the clerk's office after the original will has been filed, it will then reflect the clerk's file stamp and will be presumed to be a true copy without further proof thereof. If such photocopy is not made by the clerk, it must bear the Clerk's certification or a certification under penalty of perjury by the attorney of record that such copy is a true copy of the will filed for probate. Certification by an attorney must be dated on or after the date the will was filed. Persons acting in propria persona who are not attorneys at law may not certify the copy of the will.

Except in the case of self-proving instruments, a separate declaration of proof must be submitted for each testamentary instrument, except that when a codicil expressly republishes the will, proof of the execution of the codicil may be deemed sufficient.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 603.12 Lost or Destroyed Will

If a lost or destroyed will is admitted to probate, a copy of the provisions of the will must be attached to the order for probate.

(Adopted effective July 1, 1992)

Rule 603.13 Bonding of Personal Representatives

All petitions must state the character and estimated value of the estate and the probable income.

An individual must post bond unless waived by will or by all devisees of decedent's will or, if there is no will, by all of the decedent's heirs. If a devisee is a living trust, the acting trustee may waive bond, but only if the trustee is not the personal representative. If the trustee is the

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personal representative, then all beneficiaries of the living trust must waive bond. If a deposit is made to reduce the bond under the provisions of the Financial Code or Probate Code section 8483 then it must be made jointly by all personal representatives (including corporate fiduciaries). See Rule 613.08 for procedure in requesting a blocked account in lieu of bond.

The court will not accept a waiver from or on behalf of a minor unless the person giving the waiver is the guardian of the minor's estate and a certified copy of the guardian's letters issued within 60 days of date of hearing is attached to the waiver.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 603.14 Petition to Set Aside under Probate Code Sections 6600-6615, or for Letters

A petition to set aside under Probate Code sections 6600-6615 may be filed as a separate petition or may be worded in the alternative, i.e., the petition may pray for admission of the will and for letters testamentary, or for letters of administration, if the petition to set aside should be denied. If filed in the alternative, then publication must be made pursuant to Probate Code section 8121. If a petition to set aside is filed separately and concurrently with a petition for admission of the will or for letters of administration, the petitions should be set for hearing at the same time.

On the hearing of a petition to set aside, an inventory and appraisal must be filed five calendar days before the hearing.

(Adopted effective July 1, 1992)

Rule 603.15 Addition of Other Names by which Decedent was Known

Petitions to add another name by which the decedent was known, or to add the name of a sole proprietorship under which the decedent was doing business, may be presented ex parte or by noticed hearing. If the Notice of Administration is republished to add another name or the name of a sole proprietorship under which the decedent was doing business, the cost of the republication is a cost of administration.

(Adopted effective July 1, 1992)