

Probate Local Rules

[Proposed Repeal]

Chapter 1

Rule 601.05 Captions of Petitions

The caption of a petition must be all inclusive as to the relief sought in the petition so that the matter may be calendared and posted properly and filing fees, if any, determined. The Clerk's Office is not required to read the petition to determine the adequacy of the posting.

(Adopted effective July 1, 1992);

Rule 601.05 repealed January 1, 2017

Rule 601.07 Contested Matters

The Probate Department may hear contested matters at such times as the court deems appropriate. Contested matters in which the trial time involved is less than one-half hour may be heard on the calendar date or continued to a definite trial date if they cannot be disposed of on the same day.

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

Rule 601.07 repealed January 1, 2017

Rule 601.09 Advancement of Hearing

When a probate matter has been set for hearing, or when it has been set and then continued to a definite date, the matter cannot be heard before the date set either by means of a new petition, an amended petition, or by a new notice, except by order of the supervising probate judge.

(Adopted effective July 1, 1992)

Rule 601.09 repealed January 1, 2017

Rule 601.19 Attorneys to Announce their Names

To assure a correct record, all attorneys appearing at probate hearings are requested to announce their names and identify the parties whom they represent when they first speak. (For example: "John Doe, attorney for petitioner", or "John Doe, of Doe, Roe, and Black, appearing for respondents Jack Smith and Alice Jones", or "John Doe, attorney appearing specially for Mary Roe, attorney for petitioner Alex Smith.")

(Adopted effective July 1, 1992)

Rule 601.19 repealed January 1, 2017

Chapter 2

Rule 602.02 Additional Notice Requirements

~~Under Probate Code section 1202, the court may require additional notice in any matter. Ordinarily, the Court will require notice to be given to a person whenever it appears that the interests of that person may be adversely affected by the determination of an issue raised by the pleadings. For example, in a proceeding where the status of property is to be determined, notice should be given to all persons who would be affected.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 602.02 repealed January 1, 2017~~

Chapter 3

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 603.07 repealed January 1, 2017~~

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.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 603.09 repealed January 1, 2017~~

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 603.12 repealed January 1, 2017~~

Chapter 4

Rule 604.02 Character of Property

~~Attorneys are cautioned to comply with Probate Code section 8850(c), which requires that an inventory and appraisal show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent. Only the decedent's interest in any community or quasi-community property should be included on the Appraisal and not the entire value unless the surviving spouse is electing to probate the surviving spouse's share.~~

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

~~*Rule 604.02 repealed January 1, 2017*~~

Chapter 5

Rule 605.03 Claims of Representatives and Their Attorneys

~~The representative shall not pay any claims of the representative or the attorney for the representative without prior court approval. All such claims must be filed with the court within the period allowed by statute. Form DE 174 for allowance or rejection by the court must be submitted within the period allowed by statute. If the court sets the allowance and rejection for hearing, counsel must give required notice to all entitled to notice. See Probate Code sections 9262 and Rule 605.04.~~

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

~~*Rule 605.03 repealed January 1, 2017*~~

Chapter 7

Rule 607.11 Petitions for Change of Name

~~The petitioner and the petitioner's attorney, if any, are required to attend the hearing and appear one half (1/2) hour before hearing.~~

~~An adult petitioning for a change of his or her name should be prepared to submit to the court at the hearing a certified copy of his or her birth certificate (if born in the United States), or documents issued by the Immigration and Naturalization Service, such as a Certificate of Citizenship or Resident Alien Card (if born outside the United States), so that the court can determine the correct spelling of the name.~~

~~If the petition contains a request for change of name of a minor:~~

- ~~A. The minor may be required to attend the hearing if he or she is 14 years of age or older;~~
- ~~and~~
- ~~B. The parent should be prepared to submit to the court a certified copy of the child's birth certificate, if born in the United States, or a properly authenticated copy of a foreign~~

- birth certificate together with an English translation (including a declaration as to the qualifications of the translator), if the child was born outside the United States.
- C. ~~The non-petitioning parent's last known address must be included in item 7 of the petition. If the non-petitioning parent is alleged to be deceased, a certified copy of the death certificate shall be attached to the petition or submitted at the hearing. If the location of a non-petitioning parent is unknown, he/she may be served by publication of the Notice of Hearing to Non-Petitioning Parent in accordance with Code of Civil Procedure section 415.50. An application for order for publication may be submitted ex parte. An affidavit/declaration of diligent search, Notice of Hearing to Non-Petitioning Parent, and Order for Publication must accompany the application. (See Code of Civil Procedure 415.50)~~

(Adopted effective July 1, 1992)

Rule 607.11 repealed January 1, 2017

Chapter 8

Rule 608.01 Required Form of Accounts for Decedent's Estates and Trusts

All accounts filed in a decedent's estate or in a trust must comply with all the requirements of Probate Code sections 1061, 1062, 1063 and 1064. The account also must comply with CRC rules 7.550, 7.551, 7.552 and 7.901.

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

Rule 608.01 repealed January 1, 2017

Rule 608.02 Required Form of Accounts for Conservatorships and Guardianships

All accountings in conservatorships and guardianships must comply with CRC 7.575.

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

Rule 608.02 repealed January 1, 2017

Rule 608.19 Orders Dispensing with Accounts in Guardianships and Conservatorships

If a guardianship or conservatorship estate meets the requirements of Probate Code section 2628, a petition to waive accounts should be submitted. Orange County Form L 890 is available and may be used to make ex parte petition.

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

Rule 608.19 repealed January 1, 2017

Chapter 9

Rule 609.03 Hearings

~~Under section 203 of the Probate Code, the court can make an ex parte order establishing the fact of a joint tenant or life tenant if the petitioner executed an affidavit stating the petitioner has no reason to believe that there is any opposition to, or contest of, the petition.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 609.03 repealed January 1, 2017~~

Chapter 10

Rule 610.02 Appointment of Temporary Guardian

~~For procedures for applying for appointment of a temporary guardian, go to www.occourts.org, click on Probate, and then click on ex parte procedures. If a petitioner wishes to apply to waive or shorten notice for appointment of a temporary guardian, the petitioner must follow CRC rule 7.1012.~~

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

~~Rule 610.02 repealed January 1, 2017~~

Rule 610.15 Bonds of Guardians

~~All petitions for a reduction of bond must be filed, set for hearing, and noticed pursuant to Probate Code section 2329 except as provided in Probate Code section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.06)~~

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

~~Rule 610.15 repealed January 1, 2017~~

Rule 610.18 Deceased Wards—Liquidation of Estate

~~Petitions and orders under Probate Code section 2631 for authority to liquidate the estates of deceased wards must be submitted on Orange County Form 904.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 610.18 repealed January 1, 2017~~

Rule 610.19 Attorneys Appointed for Wards or Proposed Wards

~~The court is aware that, for attorneys appointed to represent wards or proposed wards, the prospect of future employment by the guardian might create situations which could lead to violation of Rules 3-110 and 3-310 of the Rules of Professional Conduct. Actual employment by a guardian after representation of the ward or proposed ward presents a high risk of violation of Rule 3-310 (d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent wards or proposed wards, pursuant to section 1470 of the~~

~~Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the guardian in the same guardianship.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 610.19 repealed January 1, 2017~~

Chapter 11

Rule 611.01 Appointment of Out-of-State Conservators

~~Generally, the court will not appoint an out-of-state conservator unless sufficient facts exist to support a finding that the appointment is in the best interests of the conservatee.~~

~~(Adopted effective July 1, 1992)~~

~~Rule 611.01 repealed January 1, 2017~~

Rule 611.02 Appointment of Temporary Conservator

~~For procedures for applying for appointment of a temporary conservator, go to www.ocecourts.org, click on probate and click on ex parte procedures. If a petitioner wishes to apply to waive or shorten notice for appointment of a temporary conservator, the petitioner must follow CRC rule 7.1062.~~

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

~~Rule 611.02 repealed January 1, 2017~~

Rule 611.09 Bonds of Conservators

~~All petitions for reduction in bond must be filed and set for hearing and noticed pursuant to Probate Code section 2329, except as provided in Probate Code section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.08).~~

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

~~Rule 611.09 repealed January 1, 2017~~

Rule 611.16 Deceased Conservatees—Liquidation of Estate

~~Petitions and orders under Probate Code section 2631 for authority to liquidate the estates of deceased conservatees must be submitted on Orange County Form L-903.~~

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

~~Rule 611.16 repealed January 1, 2017~~

Chapter 13

Rule 613.01 Forms

~~Orange County forms are available in connection with blocked accounts and must be used where applicable. The forms are described below:~~

~~Deposit of Minor's Funds~~

- A. — ~~Petition for Order Re Deposit of Money Belonging to Minor [Probate Code Sections 3410 et seq.] (Probate Department) 735~~
- B. — ~~Order Re Deposit of Minor's Funds [Probate Code Sections 3412 (a) and 3413 (a)] (Probate Department — Ex Parte) 738~~
- C. — ~~Order to Deposit Money and Receipt of Depository (Minor) 880~~
~~Transfer of Minor's Funds~~
- D. — ~~Ex Parte Petition for Order Re Transfer of Money Belonging to Minor and Order 754~~
~~Deposit of Decedent, Conservatee's Trust Funds~~
- E. — ~~Order to Deposit Money and Receipt of Depository (Probate Department — Decedent or Conservatee) 732~~
~~Withdrawal of Funds (Minor, Decedent, Conservatee, Trust)~~
- F. — ~~Petition for Authority to Withdraw Funds Deposited pursuant to Court Order (Minor, Conservatee or Deceased) 69~~
- G. — ~~Order for Withdrawal (Minor, Conservatee or Deceased) 153~~

~~(Revised effective July 1, 1993; revised effective July 1, 2008)~~

~~*Rule 613.01 repealed January 1, 2017*~~

~~Rule 613.07 Withdrawal of Guardianship Estate Funds from Blocked Account~~

~~For the withdrawal of funds of a guardianship estate from a blocked account, the procedures described in Rules 613.04 and 613.05 are to be followed. In addition the guardian's attorney of record should also sign the petition.~~

~~(Adopted effective July 1, 1992)~~

~~*Rule 613.07 repealed January 1, 2017*~~

~~Rule 613.09 Withdrawal of Decedent's or Conservatee's Estate Funds from Blocked Account~~

~~Form 69.4, completed and signed by the applicant should be submitted along with Form 153.4. A certified copy of the order is to be submitted to the depository. To obtain a certified copy, send the amount of the certification fee with a stamped, self-addressed envelope to the Probate Division of the Clerk's Office.~~

~~(Adopted effective October 1, 1985; revised eff. September 1, 1986; revised eff. January 1, 1988; revised eff. February 10, 1989; revised eff. August 28, 1989; revised eff. July 1, 1992)~~

~~*Rule 613.09 repealed January 1, 2017*~~