

DIVISION 6

PROBATE

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Chapter 1

General Information

Counsel and self represented parties are advised to refer to the rules applicable to particular proceedings in addition to the general information provided in this chapter and to refer to California Rules of Court Title 7- Probate Rules.

Rule 600. Application

The provisions of this division govern all probate matters where not inconsistent with law or with the California Rules of Court.

In addition to these Probate Rules, parties shall comply with all the provisions of the California Rules of Court and all other Orange County Rules of Court and Policies.

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

Rule 601.01 Filing Procedures

All documents in Probate Division proceedings other than the original documents specified on the Court's website (www.occourts.org) must be filed electronically. Original documents must be filed in the Clerk's Office by the close of business on a court day. Self-represented parties are exempt from the mandatory electronic filing requirement, but are encouraged to participate in electronic filing and service. If a party with a fee waiver files documents electronically, that party is exempt from the fees and costs associated with electronic filing.

Documents that are confidential by law should include the word "Confidential" in the caption. If a document is sealed or conditionally sealed, that fact or request should be noted in the Submitter's Comment Box.

Electronically filed documents filed before midnight on a court day will be deemed filed as of that day. Filing occurs at the time the document is received by the court as specified in the confirmation of receipt that is returned to the filer. Any electronically filed document received by the Court on a noncourt day will be deemed filed on the first court day after it is received. This provision concerns only the effective date of filing; any document that is electronically filed must satisfy all other legal filing deadlines and requirements. This Rule does not affect the timing requirements for any documents that must be filed by a set time on the due date.

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The electronic filing of documents must be effected using the Court's electronic service providers. Electronic service provider information is available on the Court's website (www.occourts.org).

(Rule 601.01 revised effective January 1, 2016; Adopted effective July 1, 1992; revised effective July 1, 2008; revised effective January 1, 2014)

Rule 601.02 Vacated

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

Rule 601.03 Lodging Voluminous Materials for Review

Parties may deposit voluminous documents that need not be part of the permanent court file but that are to be considered for their evidentiary value. The documents may be submitted with a self addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The documentation will be returned to the parties after the hearing. Documents for which arrangements are not made may be destroyed 30 days after the hearing.

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

Rule 601.04 Vacated

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

Rule 601.05 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 601.06 Approved Matters and Probate Notes

The probate notes will be updated to reflect any matters pre-approved by the court. To view notes go to www.occourts.org, click on probate and then on probate notes.

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

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Rule 601.07 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.08 Continuances

When a petition for probate is called for hearing, if an attorney or party appears and orally objects, and it is stated that written objections to the appointment or a will contest will be filed, the Court may continue the hearing. If the written objections and/or contest is not on file or the objector fails to appear at the new hearing date, the matter will be recommended for approval or proceed to hearing, as appropriate.

At the call of the calendar, if objection is taken to any matter on the approved list, and petitioner or petitioner's counsel is not present, the court may continue the matter to allow the filing of written objections and giving notice thereof to petitioner. Such continuance shall be made, and petitioner or petitioner's counsel notified in any case wherein the court proposes to effect a substantial change in the relief sought.

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

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Rule 601.09 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 601.10 Consolidation with the Lowest Number

Whenever it appears that two or more petitions with different number have been filed with reference to the same decedent, conservatee or minor, the court may, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, shall file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first.

(Adopted effective July 1, 1992)

Rule 601.11 Vacated

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

Rule 601.12 Ex Parte Matters Involving Elder or Dependent Adult Abuse

Notice of Ex Parte Application

Notice must be given so that it is received no less than four (4) hours before the time the ex parte matter will be presented to the judicial officer. A party may request that notice be waived by submitting a declaration signed under penalty of perjury which explains facts showing good cause not to give the notice or to give shortened notice.

Notice of an Ex Parte Application must be given by telephone or in writing to the self-represented party or to the opposing attorney. The notice must include a statement of the relief being requested, a statement that the opposing party is entitled to attend the court hearing in person or by an attorney, the specific date and time of the hearing, and the name and address of the court where the Ex Parte Application will be presented.

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Applications in cases not assigned to a specific judicial officer must be noticed for appearance in the Probate Clerk's Office at Central Justice Center, 700 Civic Center Drive West, Santa Ana, California.

Rule 601.12 newly adopted effective July 1, 2014.

(Adopted effective July 1, 1992; previously repealed effective July, 2008)

Rule 601.13 Petitions for Ex Parte Orders

The procedures for petitions for ex parte orders are posted at www.occourts.org, click on probate and then click on ex parte procedures.

All ex parte petitions must be verified and accompanied by a separate order complete in itself (except for forms approved by the Judicial Council). An order is insufficient if it merely provides that the petition has been granted.

Since no testimony is taken in connection with ex parte petitions, the petition must contain sufficient evidentiary facts to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient. A foundation should be set forth establishing the affiant's personal knowledge.

In cases where pleadings are presented ex parte without attorney service buckslips, attorneys should provide self-addressed envelopes with sufficient postage to have all copies returned to them.

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

Rule 601.14 Probate Orders

The party requesting an order must prepare the order unless otherwise directed by the Court. The orders should be submitted separately and not attached to any other document or pleading.

All orders or decrees in probate matters must be complete in themselves (except for forms approved by the Judicial Council). They shall set forth all matters actually passed on by the court, the date of hearing, the relief granted, the names of persons, and descriptions of property or amounts of money affected, with the same particularity required of judgments in civil matters.

All orders must be prepared so that the general effect may be determined without reference to the petition on which it is based. No order shall merely recite that the petition as presented is granted.

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All orders calling for distribution to the trustee of a testamentary trust must set forth all provisions of the will or codicil relating to the trust or trustees, in such a manner as to give effect to conditions existing at the time distribution is ordered. For example, pertinent provisions should be set forth in the present tense and in the third person, rather than merely quoting terms of the will verbatim. Counsel are advised to use caution in restating the terms of the will or codicil so as not to create new terms or to confer powers not granted by the court.

The signature line for the court should be as follows:

Dated: _____

Judge/Commissioner of Superior Court

The signature line should never be on a page by itself. The signature line must always be at the end of the order and not followed by any attachment.

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

Rule 601.15 Nunc Pro Tunc Orders Correcting Clerical Errors

If, through inadvertence, the minute order or the signed order or decree fails to state the order actually made by the court and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake. Points and authorities are not required.

The nunc pro tunc order must not take the form of an amended order and should be substantially in the following form:

In the matter of)	Case No.
)	
)	NUNC PRO TUNC ORDER
)	CORRECTING (insert title
)	of order being corrected)
_____)	

Upon consideration of the declaration of (insert name of declarant), to correct a clerical error, the (identify the order to be corrected, giving the title and date the incorrect order was signed) is corrected by striking the following (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter to be added).

This order is entered nunc pro tunc as of (here insert date the incorrect order was signed).

Dated: _____

Judge/Commissioner of Superior Court

(issued 07/01/20)

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The original order is not to be physically changed by the clerk, but is to be used in connection with the nunc pro tunc order correcting it. To prevent further errors, a complete clause or sentence should be stricken if it is intended to correct only one word or a single figure.

(Adopted effective July 1, 1992)

Rule 601.16 Bonds

When a bond must be increased, the court favors the filing of an additional bond rather than a substitute bond. When the bond must be decreased, a petition for reduction of bond must be filed and set for hearing. The court favors the use of an order decreasing the liability on the existing bond rather than the filing of a substitute bond.

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

Rule 601.17 Vacated

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

Rule 601.18 Letters

Notarization is not required of the written affirmation of letters by a fiduciary, whether subscribed within or without this state.

When multiple representatives are appointed by an order which directs that “letters shall issue to them”, the clerk will not allow less than all to qualify and have letters issues separately. If qualification of less than all is desired, it must be provided in the order or appointment.

(Adopted effective July 1, 1992)

Rule 601.19 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

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Rule 601.20 Vacated

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

Rule 601.21 Motions to Be Relieved as Counsel of Record

If an attorney wishes to withdraw from a probate proceeding as attorney of record for the estate representative or any other fiduciary, in addition to the requirements under CCP 284 and CRC 3.1362, the attorney must have a citation issued and served on such motion or petition directing the representative to appear before the court to show cause why the motion or petition should not be granted or why the representative has not taken the steps to complete his or her duties.

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

Rule 601.22 Law and Motion Matters

All rules of the Local Rules – Superior Court of California, County of Orange, and of the California Rules of Court applicable to civil matters also apply in probate law and motion matters except all documents are to be filed in the Probate Division of the Clerk’s Office. The moving party should contact the courtroom clerk of the department where the matter is set if the law and motion matter is resolved prior to the date set for hearing.

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

Rule 601.23 Guardians Ad Litem

The court, on its own motion or on the request of an interested person, may appoint a guardian ad item in connection with Probate Court matters (Probate Code section 1003). The petition for appointment may be presented ex parte in accordance with the procedures for other ex parte orders, or may be set for hearing with appropriate notices given. A guardian ad litem may be appointed even where the person has a guardian or conservator of the estate if it is deemed by the court expedient to do so.

The petition should suggest an independent individual to be appointed as guardian ad litem, or request that the court choose an individual in its discretion. If left to the discretion of the court, the court prefers to appoint an attorney who can act as his or her own counsel.

The court shall determine fees to the guardian ad litem, as appropriate, and determine from what source such fees will be paid. The court prefers to award such fees at the termination of the guardian ad litem’s representation.

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

Chapter 2

General Notice Requirements

Rule 602.01. Vacated

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

Rule 602.02 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 602.03 Vacated

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

Rule 602.04 Vacated

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

Rule 602.05 Vacated

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

Rule 602.06 Notice to Trust Beneficiaries

If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust, and the representative is either named to act or acting as the sole trustee, then the Court will require notice to the beneficiaries as required by Probate Code section 1208. In addition, the notice should be accompanied by a copy of the petition or account. If the petitioner in a petition to determine succession to real property or spousal property petition is also the trustee of a trust that is a devisee under the will, notice of the petition must be given to the trust beneficiaries pursuant to Probate Code sections 13152(a)(7) and 13655(b)(2), respectively. In addition, the notice should be accompanied by a copy of the petition.

In appropriate circumstances the Court may require the appointment of and notice to a guardian ad litem for potential beneficiaries if their interests might diverge significantly from those of the beneficiaries who are in being.

(Adopted effective July 1, 1992)

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Rule 602.07 Vacated

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

Rule 602.08 Notice when Compensation Requested for Extraordinary Services

In every case in which there is a request for compensation for extraordinary services totaling in excess of \$1,000.00, the notice must include, in addition to the time and place of hearing, a summary of the matters to be determined, including a statement of the amount of compensation requested for extraordinary services; or, alternatively, a copy of the petition must be served with the notice. If a copy of the petition is served with the notice, the proof of such service should contain an allegation to that effect, but a copy of the petition should not be attached to the original proof of service which is filed with the court.

(Adopted effective July 1, 1992)

Rule 602.09 Notice of Petitions Affecting Inheritance Tax

For estates of decedents dying before June 8, 1982, in every instance in which a petition is filed which, if granted, could possibly affect the inheritance tax paid or to be paid, notice of the hearing and a copy of the petition must be given to the State Controller.

(Adopted effective July 1, 1992)

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 Request for Bond Waiver

In all cases where a waiver of bond is being requested for a personal representative of a decedent's estate, the petitioner must submit a declaration using mandatory local form L-0758 setting forth the following information:

- (1) An estimate of any federal, state, or property tax liabilities of the estate;
- (2) An estimate of the total maximum potential liability of the estate to any known or reasonably ascertainable potential unsecured creditors of the estate, including any known contingent liabilities;
- (3) Whether the estate is expected to be solvent;
- (4) The names and addresses of any known or reasonably ascertainable potential unsecured creditors of the estate, including known contingent liabilities; and
- (5) A detailed description of the efforts taken to obtain the information required by this rule.

(Adopted effective January 1, 2019)

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)

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Rule 603.09 Confidential Supplement to Duties and Liabilities of Personal Representative

The Judicial Council Form DE-147S *Confidential Statement of Birth Date and Driver's License Number* must be filed by each personal representative and must contain the personal representative's date of birth and driver's license number. This form shall be filed as confidential and shall not be released to anyone absent a court order. The court shall maintain the form in a manner that will protect its confidentiality.

(Adopted effective July 1, 2020, previous rule repealed effective January 1, 2017; Adopted effective July 1, 1992)

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 petition 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 notice to be given to the Orange County District Attorney - Public Administrator.

(Revised effective July 1, 2016; 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 Repealed

(Repealed effective January 1, 2017; 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 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)

Chapter 4

Probate Referees, Inventories and Appraisals

Rule 604.01 Probate Referees

In all proceedings in which a probate referee is to be designated by the court, one of the referees shall be designated as follows:

- A. A request by the personal representative for the designation of a specific probate referee on a showing of good cause pursuant to Probate Code section 8921 may be submitted ex parte. The request must be presented on Orange County Form 906.
- B. Except where the court has designated a specific probate referee on the request of the personal representative pursuant to Probate Code section 8921, the clerk shall draw by lot the name of one of the probate referees, who shall thereafter be designated by the court. One referee is to be designated for matters pertaining to each proceeding. Any variation in the manner of designation of referees shall be made only by the probate judge.
- C. In the case of petitions to establish fact of death and spousal/domestic partner property petitions, if designation of a referee is required, a separate order designating the referee should be presented. In the case of petitions for probate which are not joined with spousal/domestic partner property petitions, the order designating the referee is a part of the order for probate.
- D. In cases where it is necessary to initiate a subsequent proceeding concerning the same decedent, a new order for designation of a probate referee must be made in the new proceeding. If the attorney desires the designation of the same referee who was designated in the prior proceeding, the attorney should make a written request therefore to the court pursuant to Probate Code section 8921.
- E. In cases where the designated probate referee retires or dies and no successor probate referee is designated by the court, the representative shall submit Orange County Form 42 to the clerk in the Probate Division to obtain the designation of a successor.

In all proceedings in which the probate referee is not to be selected by the court (Probate Code sections 13100 et seq., 13150 et seq., and 13200 et seq.), the petitioner or declarant, as the case may be, can select a referee who has been appointed to appraise property in Orange County from a list maintained by the Probate Division of the Clerk's Office. If real property is to be appraised, the referee must be selected from those appointed to appraise property in the county where the real property is located.

In all proceedings in which the personal representative exercises the right, pursuant to Probate Code section 8924(a)(2), to remove the first probate referee designated by the court, the

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representative shall submit Orange County Form 905.

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

Rule 604.02 Repeal

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 604.03 Report of Status of Appraisal

In each instance where the probate referee is required to make a report of the status of an appraisal pursuant to Probate Code section 8940(b)(2), such report shall be submitted on Orange County Form 907.

(Adopted effective July 1, 1992)

Rule 604.04 Appraisal by Independent Expert

Where the personal representative has elected to have an item appraised by an independent expert per Probate Code section 8904, the representative shall prepare a separate and distinct Attachment 2 (in addition to the Attachment 1 listing the property appraised by the representative) which lists all items appraised by the independent expert. At the end of this attachment there shall be a declaration by the independent expert in the following form:

Declaration of Independent Expert

I have truly, honestly, and impartially appraised, to the best of my ability, each item set forth on this Attachment 2.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(Type or Print Name)

(Signature of Independent Expert)

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

Chapter 5

Creditor's Claims

Rule 605.01 Form of Claims

A. Notice to Creditors

Notice of Administration must be given to all known or reasonably ascertainable creditors. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. Form of Claims

Judicial Council Creditor's Claim Form DE-172 must be filed by claimants in all cases commenced on or after July 1, 1988.

Amended claims and revised claims shall be filed in the same manner as the original claims.

Documentary support of all claims must be attached to the claim in accordance with Probate Code sections 9151 and 9152. Where the documentary support is lengthy, claimants should lodge their exhibits with the clerk of the probate department for review by the court, and make arrangements for their return to the claimant when the court has completed its action on the claim. See Rule 601.03.

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

Rule 605.02 Allowance or Rejection of Claims

Counsel are advised to review the court file for creditors' claims before filing the final accounting.

If Form DE-174 on an allowed creditor's claim is presented for action by the court and the court requires additional or corrective action by the claimant or estate representative, the attorney for the representative will be notified by letter and the Form DE-174 suspended 60 days. If no response is received by the end of the suspense period, the Form DE-174 will be returned without action by the court.

If a personal representative is acting under the Independent Administration of Estates Act, and no action by the Court is being requested on the Form DE-174, the place provided for allowance or rejection by the judge should be endorsed with a statement in substantially the following form: "No Court Action Required."

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

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Rule 605.03 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 605.04 Approval of Funeral and Interment Claims

In acting upon creditor's claims for decedent's funeral and interment, the court is bound by Estate of Malgor (1947) 77 Cal.App.2d 535 and other decisions to disallow unreasonably large claims.

All creditor's claims for funeral expenses must contain a statement setting forth the estimated value of the estate. Ordinarily funeral creditors' claims approved by the representative which are reasonable on their face will be approved by the court. Claims unusually large on their face will not be approved until the time for the filing of creditors' claims has expired and it appears that the estate is solvent, unless an affidavit is filed by the representative setting forth facts which justify a larger expenditure by reason of the value of the estate and the standard of living of the decedent.

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

Rule 605.05 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 setting forth reasons for any delay in making payment. The court will not allow credit for payment of interest where the delay in payment of 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.

(Adopted effective July 1, 1992)

Rule 605.06 Claims of Personal Representatives for Reimbursement for Debts of Decedent and Funeral Expenses

Debts of decedent incurred prior to death and funeral expenses paid by representatives from their own funds for which they seek reimbursement must be submitted as formal creditor's claims, presented and filed in the usual way and supported by a receipt or other sufficient evidence of payment by the representative. Such claim must be presented to the court for allowance or rejection within the statutory period for presentation of claims.

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Administration expenses advanced by the representative do not require the submission of a creditor's claim.

(Adopted effective July 1, 1992)

Rule 605.07 Claims Acted Upon by Personal Representatives Acting Under Independent Administration of Estates Act

A schedule of all claims acted upon by the personal representative acting under the Independent Administration of Estates Act prior to Court approval must be listed in any petition for distribution showing the name of the claimant, the amount claimed, the date presented, the date allowed and, if paid, the date and amount of payment. As to any claims rejected, the date of rejection must be set forth and the original notice of rejection with proof of mailing to the creditor must be filed. The petition must also contain an allegation that all debts paid were legally enforceable claims against the estate. See Rule 608.08.

(Adopted effective July 1, 1992)

Rule 605.08 Special Creditors' Claims

Public entities' creditor's claims may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

Notice to the Director of Health Care Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted effective July 1, 2008)

Chapter 6

Sales

Rule 606.01 Sales of Specifically Devised Property

On a sale of specifically devised real or personal property, 15 days notice of the time and place of hearing of the petition for confirmation and copy of the petition must be given to the devisee or the devisee's consent to such sale must be filed.

(Adopted effective July 1, 1992)

Rule 606.02 Tangible Personal Property Must Be Appraised Before Sale

Sales of tangible personal property will not ordinarily be approved or confirmed by the court unless the property has been appraised. If necessary, a partial inventory and appraisal or a letter appraisal from the probate referee shall be filed.

(Adopted effective July 1, 1992)

Rule 606.03 Sales of Securities Pursuant to Probate Code Section 10200

The following securities need not be appraised before their sale may be authorized by the court:

- A. Securities sold on an established stock or bond exchange;
- B. National market system securities on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer; and
- C. Securities surrendered for redemption conversion.

In all petitions for the sale of securities listed on an established stock or bond exchange, the specific exchange on which such securities are traded, listed and reported must be set forth. For example: NYSE; AMEX; and in the case of over the counter sales, NASDAQ. In petitions for sale of unlisted securities, the recent bid and asked prices must be set forth (the foregoing notwithstanding, see Rule 606.04, below, with regard to the sale of shares in a cooperative). Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

If securities are "closely held," the petition should furnish the basis (by appraisal or otherwise) for fixing the minimum sales price.

(Adopted effective July 1, 1992)

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Rule 606.04 Sales of Cooperatives and Mobile Homes

Sales of cooperatives (such as residential property where ownership is transferred by transfer of a stock certificate) may be sold as personal property under Probate Code section 10252 if the estate will incur loss or expense by keeping the property or, alternatively, may be sold under Probate Code section 10200 as a security. Similarly, the court may approve sales of mobile homes as depreciating property under Probate Code section 10252.

- A. If a Judicial Council form is used, the court prefers that Judicial Council Form DE-275 (Ex Parte Petition for Approval of Sale of Personal Property) be used, and the information regarding broker's compensation, if any, included. If Judicial Council Form DE-270 (Ex Parte Petition for Authority to Sell Securities and Order) is used, the following information should be included:
 - 1. the names of the purchasers;
 - 2. the sale price;
 - 3. the appraised value; and
 - 4. the broker's compensation, if any.
- B. Appraisals of the assets being sold will be required. If the cooperative or mobile home is the conservatee's residence or former residence, the appraisal date must be within six months of the date the petition is submitted or a current reappraisal of property should be submitted with the petition. If the sale price is not at least 90% of the appraised value, a declaration by the broker or other person responsible for exposing the property to the market should be submitted with the petition, explaining the exposure and why the sale price is the best that can be obtained.
- C. Petitions may be considered by the court ex parte if no requests for special notice are on file or waivers of notice are submitted. If the cooperative or mobile home is the conservatee's residence or former residence, the court will not consider the petition ex parte; rather, it requires a petition for confirmation to be set for hearing notice.

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

Rule 606.05 Exclusive Listings for the Sale of Real Property

In addition to the requirements in CRC rule 7.453:

- A. In all cases, the order shall provide that reasonable compensation to a broker will be determined by the court at the time of confirmation of sale.
- B. If the representative is acting under Probate Code sections 10500-10600, court authority is not required to give an exclusive listing.
- C. In all conservatorships in which it is proposed to list for sale the family residence, unless the conservator has been granted the power to sell such real property pursuant to Probate Code section 2590, the petition shall contain sufficient allegations to satisfy the requirements of Probate Code section 2540(b).

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

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Rule 606.06 Compensation to Brokers

The compensation to which a broker is entitled is governed by the provisions of the Probate Code (Probate Code sections 10160-10168). Upon confirmation of the sale of real property, the court will not allow compensation to a broker in excess of six percent (6%) unless justified by exceptional circumstances.

(Adopted effective July 1, 1992)

Rule 606.07 Required Allegations Regarding Efforts to Obtain the Highest and Best Price

In explanation of petitioner's efforts to obtain the highest and best price, the exposure of the real property to the market must be set forth. The petition shall include the following information:

- A. Whether or not the property was listed with a broker. If so, the type of listing and whether the property was placed in multiple listing;
- B. The extent of advertising and the method (newspapers, signs, etc.). If a newspaper was used, the number of publications and period of time it was advertised;
- C. The number of open houses held, if any;
- D. The number of caravans from the listing broker's own office and the number of caravans from other offices, if any; and
- E. The total period of time the property was exposed for sale prior to the acceptance of the offer.

If this information is not included in the petition for confirmation the court may require the matter to be continued unless a verified supplement is filed by 4:00 p.m. at least four court days before the hearing.

(Adopted effective July 1, 1992)

Rule 606.08 Published Notice and Terms of Sale

Unless a will directs sale or grants an executor the authority to sell real property of the estate (Probate Code section 10303), a publication of notice of sale of real property is required. A power of sale given by a will to a named executor does not extend to an administrator with will annexed, unless the sale is required by the will (Probate Code section 8442).

If notice of sale is published, any sale must be in substantial accordance with its terms. A sale of real property may not be made before the date stated in the notice of sale.

The published notice of sale of real property constitutes a solicitation for offers. A petition must not be filed and an offer must not be accepted prior to the date of sale specified in the published notice. If this is done, the sale will be denied.

When the personal representative accepts an offer and files a petition for confirmation of sale, there cannot be a material variance in the terms of sale as between the notice and the

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petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

In conservatorships and guardianships, absent an order under Probate Code section 2591(d) granting the conservator or guardian the independent power to sell real property of the estate, publication shall be required.

(Adopted effective July 1, 1992)

Rule 606.09 Mailed Notice of Sale

In the event of sales for other than all cash (where distribution of promissory notes, etc., which arise out of the sale may be made in kind) the court will require that notice of the hearing for confirmation, together with a copy of the petition for confirmation, be served by mail on the heirs or devisees who would receive the property at least fifteen days before the hearing.

In a conservatorship, notice shall be given to the conservatee by serving the conservatee with a copy of the petition for confirmation of sale and a notice of hearing at least fifteen days before the hearing. In a guardianship, notice shall be given to all minor wards age fourteen or older by serving a copy of the petition for confirmation and notice of hearing by mail on them at least fifteen days before the hearing.

For all sales, notice of hearing and a copy of the petition must also be served by mail at least fifteen days before the hearing on each of the proposed purchasers. See Rule 602.01 Requiring Direct Notice. Proof of the service of such notices must be filed in the Probate Division of the Clerk's Office at least four court days before the hearing or the matter may be continued.

(Adopted effective July 1, 1992)

Rule 606.10 Real Property Sales – Appraisals

As provided in Probate Code section 10309, real property must be appraised within one year of the date of the confirmation hearing. As provided in Probate Code section 2543, if the real property to be sold is the conservatee's personal residence or former personal residence, it must be appraised within six months prior to the date of the confirmation hearing, unless the court finds that it is in the best interest of the conservatee to rely on an Appraisal that is more than six months prior to the confirmation hearing. The valuation date of the original inventory and appraisal is, in the case of a decedent's estate, the decedent's date of death and in the case of a guardianship or conservatorship, the date of the appointment of the guardian or conservator, regardless of when the appraisal is actually made. Thus, a reappraisal is required for purposes of sale if the date of the confirmation hearing is more than one year after the decedent's death or the date of appointment of the guardian or conservator.

If no inventory and appraisal has been filed, a partial inventory and appraisal may be filed for this purpose, or a letter appraisal obtained from the probate referee appointed for the estate which states the current appraised value of the property and the date appraised.

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

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Rule 606.11 Conditional Sales of Real Property

Counsel are encouraged by the court not to return a sale of real property which is conditioned upon the occurrence of a subsequent event (such as obtaining financing, changing zoning, or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist, and it is necessary and advantageous to the estate, such sales may be returned.

(Adopted effective July 1, 1992)

Rule 606.12 Sales of Real Property Where Buyer Assumes or Buys Subject to Existing Encumbrance

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement.

(Adopted effective July 1, 1992)

Rule 606.13 Requests That Petitions Be Continued or Taken Off Calendar

Subject to change on order of the probate judge, one continuance on the hearing will ordinarily be granted for petitions for confirmation of sale if good cause is communicated prior to the hearing by the attorney to the probate examiner, or at the hearing to the court. Any request for a second continuance will require an appearance by the attorney and determination by the court at the time of hearing.

No petition for confirmation will be taken off calendar by anyone other than the court. The attorney will always be required to appear at the hearing and request the court to take the matter off calendar, because there may be persons at the hearing who wish to bid on the subject property.

(Adopted effective July 1, 1992)

Rule 606.14 Vacated

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

Rule 606.15 Proceedings on Overbids on Real Property

In the event there is an overbid made in court on the confirmation for sale of real property, the court will inquire of the estate representative and attorney as to their efforts to notify the original bidder concerning the date of the hearing on the petition for said confirmation, and of the necessity of their presence at court to protect their original bid. The court may continue the hearing for appropriate notice if it finds that the original bidder was not properly notified and might desire to protect his/her bid.

Counsel should be prepared to advise the court as to acceptable terms and conditions of sale if there is an overbid on terms other than all cash.

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If the sale returned for confirmation is upon credit, a higher offer made to the court pursuant to Probate Code section 10311, either for cash or upon credit, whether on the same or different credit terms, shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

If the sale returned for confirmation is for cash and a higher offer made to the court pursuant to Probate Code section 10311 is upon credit, the offer shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

Where there is successful overbid in open court on a sale of real property, counsel must complete, and the successful bidder must execute, an “Increased Bid in Open Court” form. The order will not be signed unless the form is filed with the court.

(Adopted effective July 1, 1992)

Rule 606.16 Bonds on Sales of Real Estate

Petitions for confirmation of sale of real property should set forth the amount of bond in force at the time of sale, and the amount of the property in the estate which should be covered by a bond (as provided in Probate Code sections 2320 and 8482(c)). 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 required, or if no additional bond is required, or if bond is waived, that fact must be alleged.

(Adopted effective July 1, 1992)

Rule 606.17 Order Vacating Sale and Directing Resale

In the event of buyers’ default, the order confirming sale may be vacated under Probate Code section 10350.

In the absence of an order prescribing notice, written notice of hearing shall be mailed at least 15 days before the scheduled hearing to:

- A. Defaulting purchasers unless, before the hearing, written consents to the vacation are filed with court;
- B. Brokers awarded compensation on the sale to be vacated;
- C. All heirs at law or devisees under the will; and
- D. All persons who have given notice of appearance or requested special notice.

If an order vacating sale is entered, the property must be resold as in the first instance, except as provided under Probate Code section 10351.

(Adopted effective July 1, 1992)

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Rule 606.18 Order Vacating Sale and Confirming Sale to New Bidder

Upon the buyers' default, if 60 days have not elapsed since the original confirmation of sale, and a bid is received in the same or better terms, the court can vacate the original order and confirm the sale to new buyers without requirement of new publication of notice. Probate Code section 10351.

In the absence of an order prescribing notice, written notice of the hearing of a petition under Probate Code section 10351 shall be mailed at least 15 days before the scheduled hearing to:

- A. Defaulting purchasers unless, before the hearing, written consents to the vacation of the order confirming the prior sale are filed with court;
- B. Brokers awarded compensation, if different than the brokers on resale; and
- C. All persons who have given notice of appearance or requested special notice.

A petition pursuant to Probate Code section 10351 may be heard ex parte upon presentation of the consents of all defaulting purchasers and waivers of notice by everyone else entitled to notice.

(Adopted effective July 1, 1992)

Chapter 7

Miscellaneous Petitions

Rule 607.01 Petitions for Family Allowance

A petition for family allowance for the surviving spouse, minor children of the decedent, or physically or mentally incapacitated adult children of the decedent who were dependent on the decedent for support, if made before the filing of the inventory and within six months from the qualification of the personal representative, may be presented ex parte. Ordinarily, the ex parte order for family allowance will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six months. When the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the representative must accompany the petition.

In all other cases the petition for family allowance should be noticed and set for hearing on the calendar. Known creditors should be given notice and a copy of the petition. The order will be limited to a definite period, usually not to exceed 12 months. The court will not make an order for family allowance for an unlimited period.

A petition seeking in excess of one thousand dollars (\$1,000.00) per month must contain an itemized estimate of all anticipated monthly expenses, an estimate of the gross and net estate and an estimate of the dollar amount of unpaid claims. Such itemization is preferred in all cases, and may be required with respect to petitions seeking lesser amounts. A petition containing an itemized expenditure for real or personal property must include a statement explaining how title to the property is vested.

In addition, a petition which requests an allowance for a spouse, parent, or adult child who is not incapacitated must contain statements setting forth all income from sources outside the estate, and an itemized description of such person's property.

If the estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a reasonable family allowance in accordance with Probate Code section 10535.

(Adopted effective July 1, 1992)

Rule 607.02 Petitions for Authority to Borrow Money – Bonds

A petition for authority to borrow money should state, in addition to the matters set forth in Probate Code section 9802 (b), the identity of the lender, the net amount the estate expects to receive, the amount of bond in force, and if bond is required, the amount by which the bond should be increased. If no additional bond is required, or if bond is waived, that fact should be alleged.

(Adopted effective July 1, 1992)

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Rule 607.03 Petitions to Determine Title to Real or Personal Property pursuant to Probate Code Section 850

A petition pursuant to Probate Code section 850 should be so captioned to alert the clerk to set the petition for hearing at least 40 days from the date of filing. If difficulties in service of required notices of hearing are anticipated, attorneys are asked to request a later hearing date so as to avoid continuance of the hearing date.

The description of the property in the petition must be sufficient to give adequate notice to any interested party. The description of any real property shall include the street address or, if none, an indication of the location of the property. A copy of the petition must be served with the notice of hearing.

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

Rule 607.04 Petitions for Permission to Continue Operation of Decedent's Business

In addition to the notice prescribed by Probate Code section 9760 for petitions for permission to continue the operation of a decedent's business, notice of the time and place of the hearing shall be mailed to all heirs or devisees at least 15 days prior to the time set for the hearing.

(Adopted effective July 1, 1992)

Rule 607.05 Petitions for Determination of Entitlement to Estate Distribution

A petition under Probate Code sections 11700 et seq. may include a request for an interpretation of the will. The order determining entitlement to estate distribution should provide for complete resolution of the issues raised by the pleadings. Counsel should review the following two cases for guidance in this regard: Bodine v. Superior Court (1962) 209 Cal.App.2d 354 [26 Cal.Rptr.260]; and Estate of Brissel (1963) 218 Cal.App.2d 841 [32 Cal.Rptr.458]. When a determination of distribution is requested in a petition for distribution, notice must be given in the same manner as is required when a separate petition under Section 11700 is filed.

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

Rule 607.06 Petitions to Vacate Order Fixing Inheritance Tax

In the case of decedents who died prior to the effective date of repeal of the California Inheritance Tax, June 8, 1982, an order confirming report of Inheritance Tax Referee and fixing the inheritance tax may be vacated ex parte within six months of the date of the order either on stipulation of the attorney for the estate and the State Controller or on motion under section 473 of the Code of Civil Procedure.

(Adopted effective July 1, 1992)

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Rule 607.07 Petitions to Compromise Wrongful Death Claims

Recovery of damages for wrongful death, as distinguished from physical injury and property damage, are held by the fiduciary as a representative of the statutory beneficiaries and are not part of the decedent's estate. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise pursuant to section 9835 of the Probate Code. The clerk sets the petition for hearing, and the personal representative gives notice in the manner specified in Probate Code section 1220.

This procedure is applicable to any action by the personal representative under federal law, as well as state law.

If a personal representative collects damages and costs arising out of the physical injury of decedent, or property damage as distinguished from wrongful death, the representative shall hold such money in his or her representative capacity as property of the estate. Therefore, it (or the claim giving rise to it) must be inventoried.

(Adopted effective July 1, 1992)

Rule 607.08 Petitions Filed under the Uniform Transfers to Minors Act (UTMA)

Petitions filed under the Uniform Transfers to Minors Act (Probate Code sections 3900 et seq.) to transfer title to a minor's funds to a custodian on behalf of the minor under Probate Code section 3906(c)(3) must set forth jurisdictional facts (see Probate Code section 3921), state the amount to be paid, state by whom the amount is to be paid, state what reimbursement for costs and/or fees is requested, and request the transfer of the balance of the funds to another adult or trust company as custodian as provided in Probate Code section 3909.

If distribution is to be made from a probate estate to a custodian for a minor, the requirements of Rule 608.21 must also be met in the probate proceeding.

If the petition merely seeks the transfer of the funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorney's fees are sought, the matter must be set on the court's calendar for approval.

The order shall provide for the persons holding the funds to make a check payable to the persons entitled to costs and fees and shall provide for the issuance of a check in the amount to be deposited to be payable to the proposed custodian.

(Adopted effective July 1, 1992)

Rule 607.09 Petitions to Authorize Medical Treatment for Adult without Conservator

If authorization of medical treatment for an adult without a conservator is required, the petition should be presented to the Probate Court. If the adult for whom medical treatment is sought (patient) is not represented by an attorney, the court will appoint private counsel or the Public Defender to represent the patient, set the petition for hearing within a day or two and prescribe notice. The court, in setting the petition for hearing and determining what notice is to be given, will consider the urgency, existing medical facts and the circumstances, as set forth in the petition or in a medical affidavit submitted with the petition. If the attorney for the petitioner and the attorney for the patient so stipulate, the court may, upon proper and sufficient medical

(issued 07/01/20)

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affidavits or declarations, determine the matter without hearing or notice, make an order authorizing the recommended course of medical treatment and designate the person to give consent.

(Adopted effective July 1, 1992)

Rule 607.10 Spousal Property Petitions (Probate Code Sections 13650-13660)

A petition containing an allegation that the character of any property was transmuted after December 31, 1984, by decedent and surviving spouse must be based on a writing (Family Code section 852). A photocopy of the writing showing signatures must be attached to the petition.

If a petition contains an allegation that the character of any property was transmuted before January 1, 1985, by decedent and surviving spouse, such claim may be proved either by a writing or by other supporting facts which must be set forth in the petition.

A petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (1/2) interest in such property should be listed on one schedule and the surviving spouse's undivided one-half (1/2) interest in the same property listed on another schedule.

The following requirements do not apply to a petition if the entire estate of the decedent passes to the surviving spouse either under a will or pursuant to interstate succession and one of the following applies: (a) the petition only seeks determination of the passing of the property without a finding of the character (community or separate) of the property; or (b) the decedent and surviving spouse executed a written agreement transmuting or confirming all property owned at the date of the agreement and all after-acquired property into community property; or (c) the decedent and surviving spouse executed a written agreement which transmuted or confirmed the subject property to community property and the date of acquisition of the subject property is alleged. If (b) and/or (c) apply, copies of all agreements must be attached to the petition. In all other cases, the petition must be supplemented to include the following allegations:

- A. Date and place of marriage; and domicile at the time of marriage;
- B. Dates decedent and a surviving spouse came to California, if not domiciled in California at time of marriage or resided in another state after marriage;
- C. If decedent owned any real or personal property on the date of marriage, a description of such property and the approximate value;
- D. Decedent's occupation and net worth at the time of marriage;
- E. Whether or not the decedent received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, a description of such property, giving approximate values and dates of receipt;
- F. If any property was received by decedent under E above and is part of the estate, identify the property;

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- G. The exact title vesting as of the decedent's date of death for each item of property and a statement whether it was acquired after December 31, 1984;
- H. If claims are based on any document, attach a photocopy of the document showing signatures; and
- I. In addition to the above, set forth any additional facts upon which claim of character of property is based.

(Revised effective January 1, 1994)

Rule 607.11 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Chapter 8

Accounts, Compensation and Distributions

Rule 608.01 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 608.02 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 608.03 General Information on Compensation

The court prefers to determine the amount of compensation in decedents' estates, guardianships, conservatorships, and trusts at the time an account is considered. In any request for compensation, petitioner must comply with the applicable rules in Title Seven of the California Rules of Court.

In any request for compensation, no more than five pages of detailed time records may be attached as an exhibit. In requests for compensation based on complicated or intricate cases, counsel may wish to lodge detailed time materials with the court for review. For example, handwritten logs kept by conservators of time spent should be summarized in the report that will be a part of the permanent court file, and the logs in excess of five pages may be lodged for review. Similarly, time records of a personal representative or counsel should be summarized in a petition for compensation; detailed materials in excess of five pages may be lodged for review but normally should not be filed. (See Rule 601.03)

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

Rule 608.04 Accounting for Reserve

If an order for final distribution of an estate of a decedent, ward, or conservatee, or of a trust includes a reserve between \$5,000 and \$19,999, a supplemental declaration setting forth the disposition of the reserve must be attached to the Ex Parte Petition for Final Discharge (Judicial Council form DE-295 or GC-395). If the reserve amount is \$20,000 or more, an accounting of the reserve must be attached to the Ex Parte Petition for Final Discharge. The Ex Parte Petition for Final Discharge shall be set for hearing and notice of the hearing must be given in the same manner as is required for an accounting.

(Adopted effective July 1, 2020; previous rule repealed effective July 1, 2008)

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Rule 608.05 Request for Compensation in Estates Administered under Independent Administration of Estates Act

Petitions in which compensation is requested for extraordinary services shall expressly state whether the estate is being administered under the Independent Administration of Estates Act. The court may inquire whether and to what extent the administration under the Act simplified or reduce (or reasonably should have simplified or reduced) the efforts of the personal representative and attorney, and such information shall be taken into consideration in the determination of compensation that will be allowed for extraordinary services.

(Adopted effective July 1, 1992)

Rule 608.06 Request for Compensation in Decedents' Estates Lacking Cash for Payment

The Court will not order full payment of compensation if there is insufficient cash in the estate. The Court will allow and approve compensation – but only award and order them paid to the extent there is cash on hand to do so. If heirs or devisees wish to have property distributed in kind when there are insufficient liquid assets in the estate, they may advance funds to the estate. The advancement should be shown as a miscellaneous acquisition of property (Schedule C), and this sum should be excluded in calculating any statutory compensation.

(Adopted effective July 1, 1992)

Rule 608.07 Vacated

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

Rule 608.08 Creditors' Claims

Each report or account submitted by a personal representative filed more than four months after issuance of letters shall contain an allegation that notice of administration has been given to each known or reasonably ascertainable creditor who has not been paid.

If any debt was paid without a claim having been filed or presented, the report must contain the allegations required by Probate Code sections 9154 and 11005. A separate schedule specifying the debts paid with and without formal claims may be appropriate. The foregoing information about claims must appear in the final report even though it may have appeared in whole or in part in prior reports.

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

Rule 608.09 Administration Costs

A final account will not be approved and petition either for final distribution or to terminate proceedings will not be granted unless the court is satisfied that all costs of administration, including charges for legal advertising, bond premiums and probate referees' fees have been paid.

(Adopted effective July 1, 1992)

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Rule 608.10 Taxes

Each petition for final distribution of a decedent's estate must contain an allegation that all personal property and income taxes that are due and payable have been paid. In addition, they must disclose whether a federal or California estate (and generation-skipping transfer) tax return is required, and whether there is a need for an order or orders prorating such tax or taxes under Probate Code section 20100 et seq.

This section applies to a distribution to a non-resident trustee, notwithstanding the residence of the beneficiaries.

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

Rule 608.11 Health Care Benefits

Each report of administration of a decedent's estate must contain an allegation either that a notice of death has been provided to the Director of Health Services as required by Probate Code sections 215 and 9202 or that no such notice is required. (See Welfare & Institutions Code section 14009.5)

(Adopted effective July 1, 1992)

Rule 608.12 Vacated

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

Rule 608.13 Election by Spouse to Submit Property to Administration

Any election by the surviving spouse to submit property to administration under Probate Code sections 13502-13503 must be on file before the hearing on a petition to distribute the affected asset.

If the spouse requests to file an election after the four month period allowed by Probate Code section 13502(b) (which affects the decedent's property or the spouse's property or both), the Court will require a declaration from the spouse stating all of the following:

- A. the reason for the late request;
- B. that the spouse is aware of any resultant additional fees and costs; and
- C. whether there are any creditors of the decedent who have not presented or filed claims (including any which are disputed or contingent).

If there are any claims, the request for authority to file a late election must be set for hearing and all creditors given 15 days mailed notice of hearing together with a copy of the petition.

(Adopted effective July 1, 1992)

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Rule 608.14 Disclaimers

A copy of any disclaimer must be on file prior to the hearing of any petition for distribution of any affected asset.

(Adopted effective July 1, 1992)

Rule 608.15 Vacated

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

Rule 608.16 Distributions to Assignees

If the personal representative has any reason to believe that a beneficiary has assigned an interest in the estate (other than to a trust revocable by the beneficiary) or that distribution will be made to any other transferee or attorney in fact, the representative may wish to seek specific court approval in the petition for final distribution under Probate Code section 11604.

(Adopted effective July 1, 1992)

Rule 608.17 Notice to Trust Beneficiaries

If a petition for distribution seeks the appointment of a trustee, the court will require notice to all vested and contingent beneficiaries in being. (See Rule 612.02, *infra*.)

See Rule 602.06 for notice requirements if a personal representative presents a report, account, or petition that affects the beneficiary of a trust of which the personal representative is the sole trustee.

(Adopted effective July 1, 1992)

Rule 608.18 Vacated

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

Rule 608.19 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 608.20 Completeness of Petitions, Accounts and Orders

Each account, report of administration, and petition for final (but not necessarily preliminary) distribution must identify all assets on hand (including cash) at the end of the accounting period or at a specified date reasonably close in time to the date a report or petition not accompanied by an account is presented to the court. However, complete legal descriptions need only be included when distribution is requested.

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Unless any interested party requests a different allocation by the court under Probate Code section 11624, the cost of each proceeding for a preliminary distribution shall be borne by the estate. The allocation of the cost of the proceeding must be included in the order.

If a reserve is requested, the use of property reserved must be specifically described (income taxes, transfer taxes, closing costs, etc.).

In orders settling accounts, it is proper to use general language approving the account and report and the acts reflected therein, but such orders may not merely recite that the petition as presented is granted. Orders approving and/or settling reports and/or accounts must also identify the assets on hand, specifically noting the amount of cash and cash equivalents (such as certificates of deposit) included in the balance. For example: “The personal representative has in his/her possession belonging to the estate, after deducting the credits to which he/she is entitled, a balance of property on hand in the amount of \$_____, of which \$_____ is in cash and/or cash equivalent.

An order and decree of distribution must be complete in itself. (See Rule 601.13) The property distributed to each distributee should be listed and set forth in detail. The description of any real property (including a security interest) must include the complete legal description and then street address or other commonly used mode of identification. If an omnibus clause is included for after discovered property, it must specifically state to whom the property will be distributed and in what proportions.

If property is to be distributed, the order and decree of distribution or order settling the final account in a guardianship or conservatorship should state that the personal representative, guardian or conservator shall be entitled to discharge upon filing receipts of distributees and submitting an Affidavit or Declaration for Final Discharge (Orange County Form 105.3).

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

Rule 608.21 Documents to Be on File before Hearing on Petition for Distribution

The court will require the following documents to be on file before making an order for distribution:

- A. If distribution is to be made to the guardian of a minor, a certified copy of the letters of guardianship;
- B. If distribution is to be made to a parent for the benefit of a minor under Probate Code section 3401, a copy of the written assurance of such parent;
- C. If distribution is to be made for the benefit of a minor under Probate Code section 3410 et seq., a separate petition and order under the minor’s name with a different case number is required. A copy of such order must be filed in the decedent’s estate proceeding;
- D. If distribution is to be made to a person collecting assets under Probate Code section 13100 or 13200, the required affidavit or declaration under penalty of perjury of such person. If distribution is to be made to a person pursuant to a court order made under Probate section 13150, et seq., or 13650, et seq., a copy of the order;

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- E. If distribution is to be made to the person representative of the estate of a deceased beneficiary, a certified copy of the representative's letters;
- F. If distribution is to be made to a testamentary trustee, the consent of the trustee to act;
- G. If distribution is to be made to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act (Probate Code section 3900 et seq.), the written notice of acceptance of the office contemplated by Probate Code section 6347(b) by the custodian; and
- H. If preliminary distribution under Probate Code section 11620 or 11623 is requested, the inventory and appraisal listing each asset to be distributed.

(Adopted effective July 1, 1992)

Rule 608.22 Vacated

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

Chapter 9

Joint Tenancies and Life Estates

Rule 609.01 Proceedings Must Be in Name of Decedent

A petition to establish fact of death must be filed in a proceeding in the name of the deceased person whose interest is being terminated.

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

Rule 609.02 Separate Petition Preferred

Sections 201 and 202 of the Probate Code authorize a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. Whenever possible, attorneys are encouraged to file separate petitions under the same number in order to avoid procedural difficulties. A petition may not be filed in the estate proceeding after the filing of a petition for final distribution. A petition to establish fact of death which is filed after a petition for final distribution must be filed in a new proceeding under a new case number.

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

Rule 609.03 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 609.04 Inventories Unnecessary

It is not necessary to list joint tenancy assets or assets subject to a life estate in the form of an inventory and appraisal, as in the case of assets subject to a probate administration proceeding. Assets should be described in the petition for decree establishing fact of death or in an exhibit thereto and made a part thereof.

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

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Rule 609.05 Attorney Fees

There is no provision in the Probate Code for determination by the Probate Court of attorney's fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character shall be included in any petition for fees in a probate estate matter, and, if so included, will not be granted. However, where the termination of a joint tenancy with a previously deceased joint tenant is necessary to clear title to property in the decedent's estate, a fee for extraordinary services may be proper in the probate estate matter.

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

Chapter 10

Guardianships

Rule 610.01 Consolidation of Adoption and Guardianship Proceedings

If an adoption proceeding is pending involving a minor who is also the subject of a petition for guardianship, the proceedings will be consolidated and heard in the department designated by the presiding judge to hear consolidated adoption/guardianship proceedings.

(Adopted effective July 1, 1992)

Rule 610.02 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 610.03 Vacated

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

Rule 610.04 Appointment of General Guardian

Petitions for appointment of general guardians are set on calendar for hearing, and the appearance of the proposed guardian and counsel are required. The court does not favor waiver of statutory notice on the appointment of a general guardian of a minor. However, the court can dispense with notice if sufficient grounds are given to justify an allegation that notice prescribed by Probate Code section 1511 cannot be given with reasonable diligence, or that the giving of such notice is contrary to the interests of justice. In all cases the court will require nomination or consent of a minor if such minor is fourteen years of age or older and if such minor has the capacity to nominate.

When a petition seeks the appointment of a non-petitioning guardian, a consent to serve as guardian must be filed for each non-petitioning proposed guardian.

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

Rule 610.05 Waiver of Investigation and Report

When a petition requests appointment of a guardian of the estate only, the investigation otherwise required by Probate Code section 1513 is waived, and no guardianship investigation fee is required.

(Adopted effective July 1, 1992)

Rule 610.06 Vacated

(Revised effective September 1, 1998; repealed effective July 1, 2008)

Rule 610.07 Guardianship of the Person – Investigation Fees

When a petition requests appointment of a guardian of the person, a nonrefundable guardianship investigation fee based upon the actual cost of the investigation as set forth in the statute and current fee schedule must be paid to the clerk in addition to the regular filing fee. (Probate Code section 1513.1)

(Revised effective October 1, 1993)

Rule 610.08 Vacated

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

Rule 610.09 Vacated

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

Rule 610.10 Petitions for Appointment of Non-Profit Corporations as Guardians of Minors

In addition to the usual allegations in a petition for appointment of a guardian of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code section 2104.

(Adopted effective July 1, 1992)

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Rule 610.11 Duties of Guardian – Liability of Parents to Support Child

As parents are required by statute to support their children, the court will not permit guardianship funds to be used for the minor's maintenance and support where one or both parents are living, except upon a showing of the parent's financial inability (supported by the Judicial Council Form Income and Expense Declaration) or other circumstances which would justify the court in departing from this rule in the best interests of the minor.

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

Rule 610.12 Guardians' Accounts

All accounts filed in guardianship cases must comply with CRC rule 7.575.

Private professional guardians are to file original financial account statements as required in Probate Code section 2620(c)(3). All such statements are to be filed separate from the guardianship accounting. The caption shall state "Private Professional Bank and Financial Records per Probate Code section 2620(c)(3)" and the date, time and department of the hearing. The private professional guardian must retain the originals until the order approving the final account is final.

If all of the original financial account statements are received from the financial institution(s) in electronic form, they are to be electronically filed per Local Rule 601.01. The private professional guardian must affirm under penalty of perjury that all of the original account statements filed were received from the financial institution(s) in electronic form. That affirmation may be contained in the associated petition to approve accounting, or in a separate declaration filed with the account statements.

If any of the original financial account statements were not received from the financial institution(s) in electronic form, the non-electronic originals must be filed in accordance with California Rules of Court, rule 2.252, subdivision (e). The non-electronic originals will be returned to the submitting party after examination and becoming part of the court's electronic record, pursuant to Government Code section 68150. The court will retain the documents in electronic form only. The private professional guardian must submit with the records a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The private professional guardian must retain the originals until the order approving the final account is final.

(Revised effective January 1, 2018; adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 610.13 Vacated

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

Rule 610.14 Additional Independent Powers

The court may, on the petition of the guardian, either at the time of appointment or later, grant additional independent powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each section 2591 power requested the facts and reasons which justify the independent exercise of the power. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of guardianship.

(Adopted effective July 1, 1992)

Rule 610.15 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 610.16 Investments by Guardian

The standard set forth in section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by guardians. The guardian should also consider the circumstances of the estate, indicated cash needs, and the date of prospective termination of the guardianship. The Probate Court does not act as an investment counselor but suggests that the investments by guardians should be prudent and in keeping with the size and character of the ward's estate. Investments in existence at the time of the creation of the guardianship usually may be maintained, subject to the provisions of section 16048 of the Probate Code. Investments other than as provided in Probate Code section 2574 require court authorization unless the guardian is empowered to so act pursuant to Probate Code sections 2590 et seq.

The court will not ordinarily approve the investment of the ward's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the ward's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investment in real estate, either by purchase or encumbrance, usually will not be granted unless supported by an M.A.I. appraisal.

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

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Rule 610.17 Vacated

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

Rule 610.18 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 610.19 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Chapter 11

Conservatorships

Rule 611.01 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

Rule 611.02 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.03 Appointment of General Conservator

All petitions for appointment of a conservator must state whether there is presently a conservator appointed under the Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code, Part I of Division 5 beginning with section 5000). If an LPS conservatorship exists, notice must be given to the LPS conservator and counsel representing the LPS conservatee.

When the proposed conservatee is, or was, the subject of a guardianship, the petition must include the case number of the prior guardianship, the name of the prior guardian(s), and the names of the attorneys for the prior guardian or ward.

At the time of filing of a petition for conservatorship, the petitioner must advise the court if the proposed conservatee is the settlor of a pre-existing trust, or is a beneficiary of any trust. If so, the petitioner must inform the court of the estimated value of the assets of the trust, if known.

When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence of the trust, and the petitioner or proposed conservatee's status and interest in the trust, must be disclosed in the petition.

This information must be provided to the court using local form L-935 Declaration of Petitioner Regarding Trust and Trust Assets of Proposed Conservatee which must be filed concurrently with the petition for appointment of conservator.

In any case in which the petitioner requests dismissal of a petition for the appointment of a conservator or successor conservator or to have a petition placed off calendar, a declaration by the petitioner in support of the request must be filed with the court stating:

- A. The change in circumstances which has occurred since the filing of the petition which has eliminated the need for a conservatorship;
- B. Any transfers of property by the proposed conservatee since the filing of the petition

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(including, but not limited to, purchases, sales, gifts and declarations of trust), or, in the alternative, a statement that no single such transaction by the conservatee exceeded \$500.00, and the aggregate of such transactions during the period did not exceed \$3,000.00; and

C. Any assets marshaled by the temporary conservator, and any transfers of conservatorship assets (including, but not limited to, purchases, sales, gifts and declarations of trust) by the temporary conservator.

(Revised effective July 1, 2020; revised effective July 1, 2009; adopted effective July 1, 1992)

Rule 611.04 Petition for Appointment of Non-Profit Corporations as Conservators

In addition to the usual allegations in a petition for appointment of a conservator of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code section 2104.

(Adopted effective July 1, 1992)

Rule 611.05 Vacated

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

Rule 611.06 Capacity to Give Informed Consent for Medical Treatment

If a separate petition is filed concerning the capacity of a conservatee to consent to medical treatment pursuant to Probate Code sections 1880 et seq., the petition shall contain a statement that there is on file a current Notification to Court of Address form, or the petitioner shall file a current Notification to Court of Address form concurrently with the petition.

If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code section 1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

When the Court grants the conservator the exclusive authority to consent to medical treatment on behalf of the conservatee, such authority is subject to the following reservation and condition:

The conservator may not consent to the sterilization of the conservatee. [Such authority must be specifically sought under Section 1952 (developmentally disabled conservatees) or Section 2357 (all other conservatees) of the Probate Code. For required allegations, proof, and findings counsel are advised to consult In re Valerie N. (1985) 40 Cal.3d 143, 166-169]

All orders granting exclusive medical consent authority to a conservator and letters of conservatorship issued thereon shall contain the following condition:

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The conservator may not consent to the sterilization of the Conservatee.

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

Rule 611.07 Additional Independent Powers

The court may, on the petition of the conservator, either at the time of appointment or later, grant additional independent powers to the conservator as authorized by sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each section 2591 power requested the facts and reasons which justify the independent exercise of the power. Additionally, if the power to sell the conservatee's present or former personal residence is requested, the petition must state all of the information required under section 2540(b). The information required under section 2540(b) must be provided the first time the conservator seeks authority to list or sell the conservatee's present or former personal residence. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of conservatorship.

Where the power is granted to sell real property (thereby eliminating the need to publish notice of sale), the court ordinarily requires the sale to be returned to the court for confirmation.

(Adopted effective July 1, 1992)

Rule 611.08 Establishing Trusts for Conservatees

If a petition seeks authority to establish a living trust for the benefit of a conservatee with conservatorship assets, the court will require that the trust provide:

- A. that the conservator of the estate (or, if none, of the person) shall have the power to amend or revoke the trust, subject to prior court approval;
- B. that all fees awarded by the court to the conservator (person and/or estate) and the conservator's attorney shall be paid by the trustee if so ordered by the court;
- C. that all costs assessed for visits by the Probate Court Investigator shall be paid by the trustee if so ordered by the court;
- D. that the principal may be invaded for the benefit of the conservatee, and such power of invasion shall be construed liberally in favor of the conservatee; and
- E. that during the lifetime of the conservatee the trustee shall file an account with the court every two years, and notice of hearing on the account shall be given in the same manner and for the same time as required in conservatorship accounts.

A copy of the proposed trust instrument must be attached to the petition. The terms of the trust, as authorized by the court, must be set forth fully in the order submitted after hearing.

If a petition seeks to transfer conservatorship assets to an already established living trust, the court will ordinarily grant such authority if that trust provides that the assets will be available for the support and maintenance of the conservatee during his or her life.

(Adopted effective July 1, 1992)

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Rule 611.09 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.10 Investments by Conservators

The standard set out in section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by conservators. The Probate Court does not act as an investment counselor but suggests that the investments by conservators should be prudent and in keeping with the size and character of the conservatee's estate. Investments in existence at the time of the creation of the conservatorship usually may be maintained, subject to the provisions of section 16048 of the Probate Code. Investments other than as provided in Probate Code section 2574 require court authorization unless the conservator is empowered to so act pursuant to Probate Code section 2590, et seq.

The court will not ordinarily approve the investment of the conservatee's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the conservatee's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investments in real estate, either by purchase or encumbrance, will not be granted unless supported by an M.A.I. appraisal.

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

Rule 611.11 Conservators' Accounts

All accounts filed in conservatorship cases must comply with CRC rule 7.575.

Private professional conservators are to file original financial account statements as required in Probate Code section 2620(c)(3). The private professional must file the bank and financial records separate from the conservator accounting. The caption shall state "Private Professional Bank and Financial Records per Probate Code section 2620(c)(3)" and the date, time and department of the hearing. The private professional conservator must retain the originals until the order approving the final account is final.

If all of the original financial account statements are received from the financial institution(s) in electronic form, they are to be electrically filed per Local Rule 601.01. The private professional conservator must affirm under penalty of perjury that all of the original account statements filed were received from the financial institution(s) in electronic form. That affirmation may be contained in the associated petition to approve accounting, or in a separate declaration filed with the account statements.

If any of the original financial account statements were not received from the financial institution(s) in electronic form, the non-electronic originals must be filed in accordance with California Rules of Court, rule 2.252, subdivision (e). The non-electronic originals will be returned to the submitting party after examination and becoming a part of the court's electronic record, pursuant to Government Code section 68150. The court will retain the documents in

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electronic form only. The private professional conservator must submit with the records a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip.

Where a conservator accounts for the assets of more than one conservatee, the accounting for each conservatee must be set forth separately.

The conservatee's current residence address should be set forth in each report or account filed.

Each report/final account of a conservator upon termination of the proceeding due to the conservatee's death must contain an allegation either that notice of the conservatee's death has been provided to the Director of Health Services as required by Probate Code section 215 or that no such notice is required. (See Welfare & Institutions Code section 14009.5)

The order submitted after hearing should, when appropriate, contain a direction to the conservator to pay the assessments imposed pursuant to section 1851.5 of the Probate Code to the Orange County Clerk, in care of Finance Division, P.O. Box 838, Santa Ana, California 92702. When containing a direction to pay, the order should state the dollar amount assessed. On current accounts where the court has found that the assessments would pose a hardship to the estate, the order submitted after hearing should contain such a finding and an order that the assessments not be paid except upon further court order.

Waivers of account will be accepted in the court's discretion only in the following instances:

- A. When the proceeding is terminated by court order, and the conservatee thereafter waives an account; or
- B. When the proceeding is terminated by death of the conservatee and either (1) there is no will and a written waiver is obtained from all of the conservatee's heirs; or (2) there is a will and a written waiver is obtained from the executor and the devisees under the will after the order admitting the will has become final; and (3) the time to present creditors' claims has expired and there is a representation by the estate representative that the estate is solvent. Waivers will be accepted only from heirs or devisees who are competent adults.

(Revised effective January 1, 2018; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.12 Substituted Judgment

The party filing a petition for substituted judgment (Probate Code section 2580) must fully inform the court of all relevant circumstances. The petitioning party must use due diligence to inform the court of everything a reasonable person in the conservatee's position would have wanted to know before deciding whether or not a proposed action should be taken. See Conservatorship of Hart (1991) 228 Cal.App.3d 1244.

The Court may appoint counsel for the conservatee. The Court may also require the appointment of an expert to investigate, report or testify if it would be helpful to the Court's determination.

If the Court grants a petition for the exercise of substituted judgment, the order submitted after hearing must contain the findings required by Probate Code section 2582. See also Rule

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611.08 for additional requirements relating to trusts.

(Adopted effective July 1, 1992)

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Rule 611.13 Petitions to Terminate Conservatorship

When a petition seeks termination of a conservatorship, the court will ordinarily require the appearance of the conservatee at the hearing on the petition.

(Adopted effective July 1, 1992)

Rule 611.14 Death of the Conservatee

Within 30 days of the death of the conservatee, the conservator shall notify the court or cause the court to be notified of the death. Such notice need not be in any particular form but must:

- A. be in writing;
- B. be signed by the conservator or the conservator's attorney of record; and
- C. state the date of death of the conservatee.

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

Rule 611.15 Vacated

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

Rule 611.16 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.17 Attorneys Appointed for Conservatees or Proposed Conservatees

The court is aware that, for attorneys appointed to represent conservatees or proposed conservatees, the prospect of future employment by the conservator 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 conservator after representation of the conservatee or proposed conservatee presents a high risk of violation of Rule 3-314(d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent conservatees or proposed conservatees, pursuant to sections 1470 or 1471 of the Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the conservator in the same conservatorship.

(Adopted effective July 1, 1992)

Rule 611.18 Vacated

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

Rule 611.19 Conservator’s Handbook and Orientation Program

Each proposed conservator (other than a proposed temporary conservator) must attend an orientation program provided by the Court before the hearing date on the petition for appointment. The Conservator’s Handbook must be purchased and taken to the orientation program.

These requirements must be met before the hearing date and proof of compliance must be filed no later than five court days before the scheduled hearing on the petition for appointment of a general or limited conservator.

Failure to meet these requirements may result in the petition for appointment being ordered off calendar if the person has not been appointed temporary conservator. If a temporary conservator fails to attend the orientation program, the conservator and counsel must attend the hearing on the petition for appointment of the general or limited conservator. Failure of the temporary conservator to attend the hearing may result in suspension of the temporary conservator’s powers and issuance of citation to compel appearance.

At the hearing the temporary conservator must show good cause why the temporary conservator failed to attend the orientation program. Lack of planning to attend, inconvenience, being too busy, and the like, do not constitute good cause. Unless good cause is shown the Court will ordinarily consider terminating the temporary conservatorship, ordering the petition for appointment of general or limited conservator off calendar, and making other appropriate orders.

The Public Guardian, corporate fiduciaries, banks and other entities authorized to conduct the business of a trust company are exempt from these requirements. All other proposed conservators, including private professional conservators, must meet these requirements once. While each proposed conservator must only purchase one handbook and attend one orientation program, proof of compliance must be timely submitted in each case where appointment is sought.

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

Rule 611.20 Visitation

The Court expects a conservator to visit the conservatee with sufficient frequency to assure that the conservatee’s needs are being met. The frequency of visitation will vary depending on the conservatee’s living situation and needs. If the conservatee is living in a skilled nursing facility the court expects the conservator to visit at least once a month. The plan for visitation should be included in the general plan together with an explanation of why the proposed frequency of visitation is appropriate.

(Adopted effective July 1, 1992)

Chapter 12

Repealed

Rule 612.01 Vacated

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

Rule 612.02 Vacated

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

Rule 612.03 Vacated

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

Chapter 13

Blocked Accounts in Guardianships, Conservatorships, Decedent’s Estates and Trusts

Rule 613.01 Repealed

(Repealed effective January 1, 2017; Revised effective July 1, 1993; revised effective July 1, 2008)

Rule 613.02 General Information on Blocked Accounts

A. Notice of Hearing

If the petition merely seeks the deposit of funds or the deposit of funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorneys’ fees (or other items) are sought, the matter may be set by the court for hearing on calendar, in which case, the clerk will notify the attorney, or, if there is no attorney, the petitioner of the hearing date and time. Upon such notification, such person shall give mailed notice of the hearing and proceeding to all interested persons at least 15 days before the date of the hearing and submit proof of service thereof no later than 4:00 p.m. four court days prior to the hearing.

B. Title to Account

The title to any blocked account shall show the name of the minor, conservatee or estate.

C. Account Requirements

All deposits into blocked accounts shall be into federally insured, interest bearing accounts having no maturity date unless otherwise ordered by the court. If funds are to be placed in an account having a maturity date, the applicant and counsel are cautioned that sufficient funds should be maintained in another account to pay reasonably foreseeable expenses, such as taxes, without incurring penalties or loss of interest.

D. Maximum Amount in Blocked Account

The maximum initial deposit into any one blocked account shall be Ninety Thousand Dollars (\$90,000). In no event shall more than One Hundred Thousand Dollars (\$100,000) be held in any one federally insured depository. If it is necessary to transfer funds to an additional federally insured depository to comply with this rule, a petition to transfer funds (such as Form 754) shall be submitted.

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E. Withdrawals

Except in the case where a minor becomes an adult and the order for deposit provides for automatic withdrawal by the minor upon attaining majority, no withdrawals of principal or interest shall be made without the prior written order of the court. (See Rule 613.04 for minors who attain majority.)

A certified copy of the court's order bearing the impression seal of the court must be submitted to the depository at the time of withdrawal and the certified copy will be retained by the depository. Only one certified copy of the order for withdrawal will be provided by the court. A copy of the order to be certified and the certification fee should be submitted with the petition and order, together with the copies requested to be conformed.

F. Depository Receipts

The orders for deposit (Forms 732 and 880) are quadruplicate forms, the original of which will be signed by the court and filed. The remaining three copies will be returned to the attorney or applicant for delivery to the depository. The branch manager or office of the depository must sign the receipt on the blue copy and return it to the court, present the white copy to the attorney or applicant, and retain the yellow copy.

All depository receipts of depository must be completed by the depository and the blue copy filed with the court within 30 days of the date that the order for deposit is signed. If the receipt is not on file by that date and no extension of time has been granted, the applicant will be cited to appear before the court. In addition to the court's other remedies, sanctions pursuant to Code of Civil Procedure section 177.5, not to exceed fifteen hundred dollars (\$1,500), may be imposed if funds are not deposited as required. Requests for an extension of time should be made by ex parte written application submitted prior to 4:30 p.m. on the day which is two court days before the end of the 30 day period.

G. Separate Petitions and Blocked Accounts for Each Minor

A separate petition must be filed for each minor whose funds are to be deposited in a blocked account. A separate blocked account shall be established for the funds of each minor.

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

Rule 613.03 Deposit of Minors' Funds in Blocked Accounts (No Guardianship Estate)

To obtain an order for the deposit of a minor's funds in a blocked account, Form No. 735 should be submitted with Form No. 738 and Form No. 880, all of which should be completed and signed by the applicant.

If the applicant has reason to believe the minor will be unable to manage his or her own financial affairs upon attaining majority because of mental or physical incapacity, the applicant should file a verified declaration with the petition explaining the situation. The court may strike the language in the orders requiring automatic release to the minor upon attaining majority.

(Revised effective July 1, 1993)

(issued 07/01/20)

Rule 613.04 Withdrawal of Funds of Former Minor Now 18 Years or Older

If the court order establishing the blocked account states the funds are to be paid by the depository without further order of the court to the former minor when the former minor reaches the age of majority, the depository may pay the funds directly to the former minor without further court order. If the depository requires a certified copy of such order, the amount of the certification fee (together with a copy of the order, request for certification, and a stamped, self-addressed envelope) should be sent to the Probate Division of the Clerk's Office.

If the court order establishing the blocked account does not provide for payment to the former minor without further court order, or if the depository requires a new order for withdrawing the funds, a completed Form 69.4 and Form 153.4 should be submitted. The petition must be signed by the former minor and the former trustee/guardian and it must be verified by the former minor. If the funds were deposited in a guardianship, the attorney of record must also sign the petition. If the applicant cannot locate the attorney through local directories, the applicant should contact the membership section of the California State Bar. If the attorney's signature cannot be obtained, a declaration of explanation should be submitted.

The forms should be submitted with a certified copy of the birth certificate (or the former minor may appear with a valid California driver's license) and either:

- A. an updated savings passbook or statement showing all entries since the account was opened; or
- B. a letter from the depository identifying the account and setting forth the dates and amounts of all withdrawals and the current balance.

A certified copy of the order should be submitted to the depository. To obtain a certified copy, the amount of the certification fee (together with a stamped, self-addressed envelope) should be sent to the Probate Division of the Clerk's Office.

(Adopted effective July 1, 1992)

Rule 613.05 Withdrawals during Minority

All requests for withdrawal of minors' funds held in blocked accounts (including funds deposited pursuant to orders compromising minor's claims) shall be made by petition (Form 69.4) to the probate court. Requests for withdrawals may be presented ex parte. In all cases, whether or not set for hearing, sufficient documentation to support the request must be submitted with the petition.

In addition to the trustee/guardian, minors age 14 or over must sign and date the petition or an explanation for the absence of the minor's signature must be provided.

Except for withdrawals to pay taxes on a minor's funds, orders for withdrawals will ordinarily not be granted if either or both parents are living and financially able to pay the requested expenditure. Except for petitions for withdrawals to pay taxes, a financial declaration by the parents or parent describing their income and expenses must be attached to the petition.

A statement regarding the minor's employment and income, if any, must be attached.

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Copies of bills, statements or letters related to the request must be attached to the petition.

For requests for payments of taxes on the minor's funds, copies of the applicable tax returns must be submitted separately with the petition but should not be attached to the petition.

If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement must be attached to the petition showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement should not be entered into before obtaining a court order as the petition may be denied. In addition, a casualty insurance quote must be attached to the petition showing that the minimum public liability coverage equals or exceeds the funds which will remain on deposit after the purchase, and the petition must contain an explanation of who will pay for the insurance.

If the request for withdrawal pertains to medical care or an accident or other casualty, an explanation as to why the expense is not covered by insurance must be included.

If the request is for reimbursement for an expense already paid, proof of payment (i.e. canceled check or receipt) must be attached to the petition.

(Adopted effective July 1, 1992)

Rule 613.06 Deposit of Funds of Guardianship Estate in Blocked Account

A request to deposit funds of a guardianship estate in blocked accounts may be included in the petition for appointment or made by subsequent petition for the purpose of reducing bond. Form 880, completed and signed by the applicant, should be submitted along with the order granting the petition before the court.

If the applicant has reason to believe the minor will be unable to manage his or her own financial affairs upon attaining majority because of mental or physical incapacity, the applicant should file a declaration with the petition explaining the situation. The court may strike the language in the order requiring automatic release to the minor upon attaining majority.

If a minor's estate consists of money only, a guardian of the estate may not be necessary as the funds may be deposited in blocked accounts as set forth in Rule 613.03. However, where a guardian of the estate has been appointed, the deposit of funds of the guardianship estate into blocked accounts does not relieve the guardian of his or her duty to file the inventory. The guardian must file accounts unless the Court has made an order dispensing with accounts pursuant to Probate Code section 2628. If the minor's estate consists entirely of funds which can be deposited in blocked accounts, the guardian may wish to terminate the guardianship of the estate.

(Revised effective July 1, 1993)

Rule 613.07 Repealed

(Repealed effective January 1, 2017; Adopted effective July 1, 1992)

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Rule 613.08 Deposit of Decedent’s or Conservatee’s Estate Funds in Blocked Account

A request to deposit a decedent’s or a conservatee’s funds in blocked accounts may be included in the petition for the appointment or made by subsequent petition for the purpose of reducing bond. Form 732 completed and signed by the applicant should be submitted along with the order granting the petition before the court.

(Adopted effective July 1, 1992)

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

(Repealed effective January 1, 2017; 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)