

Title 7. Probate Rules

Chapter 1. General Provisions

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Rule 7.1. Probate Rules

The rules in this title may be referred to as the Probate Rules.

Rule 7.1 adopted effective January 1, 2007.

Rule 7.2. Preliminary provisions

(a) Application of rules

The rules in this title apply to every action and proceeding to which the Probate Code applies and, unless they are elsewhere explicitly made applicable, do not apply to any other action or proceeding.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose of rules

The rules in this title are designed to implement the purposes of the probate law by promoting uniformity in practice and procedure.

(Subd (b) amended effective January 1, 2007.)

(c) Rules of construction

Unless the context otherwise requires, these preliminary provisions and the following rules of construction govern the construction of the rules in this title:

- (1) To the extent that the rules in this title are substantially the same as existing statutory provisions relating to the same subject matter, they must be construed as a restatement and a continuation of those statutes; and
- (2) To the extent that the rules in this title may add to existing statutory provisions relating to the same subject matter, they must be construed so as to implement the purposes of the probate law.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) Jurisdiction

The rules in this title are not intended to expand, limit, or restrict the jurisdiction of the court in proceedings under the Probate Code.

(Subd (d) adopted effective January 1, 2003.)

Rule 7.2 amended and renumbered effective January 1, 2007; adopted as rule 7.1 effective January 1, 2000; previously amended effective January 1, 2003.

Rule 7.3. Definitions and use of terms

As used in the rules in this title, unless the context or subject matter otherwise requires:

- (1) The definitions in division 1, part 2 of the Probate Code apply.
- (2) “Pleading” means a contest, answer, petition, application, objection, response, statement of interest, report, or account filed in proceedings under the Probate Code.
- (3) “Amended pleading” means a pleading that completely restates and supersedes the pleading it amends for all purposes.
- (4) “Amendment to a pleading” means a pleading that modifies another pleading and alleges facts or requests relief materially different from the facts alleged or the relief requested in the modified pleading. An amendment to a pleading does not restate or supersede the modified pleading but must be read together with that pleading.
- (5) “Supplement to a pleading” and “supplement” mean a pleading that modifies another pleading but does not allege facts or request relief materially different from the facts alleged or the relief requested in the supplemented pleading. A supplement to a pleading may add information to or may correct omissions in the modified pleading.

Rule 7.3 amended and renumbered effective January 1, 2007; adopted as rule 7.2 effective January 1, 2000; previously amended effective January 1, 2002, and January 1, 2003.

Rule 7.4. Waiver of rules in probate proceedings

The court for good cause may waive the application of the rules in this title in an individual case.

Rule 7.4 renumbered effective January 1, 2007; adopted as rule 7.3 effective January 1, 2000; previously amended effective January 1, 2003.

Rule 7.10. Ex parte communications in proceedings under the Probate Code and certain other proceedings

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

- (1) “Fiduciary” has the meaning specified in Probate Code section 39, and includes LPS conservators.
- (2) “Person” has the meaning specified in Probate Code section 56.
- (3) “Pleading” has the meaning specified in rule 7.3, but also includes petitions and objections or other opposition filed in LPS conservatorships. The term does not include creditors’ claims and requests for special notice.
- (4) A “party” is a fiduciary appointed in a proceeding under the Probate Code or an LPS conservatorship proceeding, and any other person who has filed a pleading in the proceeding concerning a matter then pending in the court.
- (5) A “ward” is a minor subject to a guardianship under division 4 of the Probate Code, including a proposed ward concerning whom a petition for appointment of a guardian has been filed.
- (6) “Ex parte communication” is a communication between any party, attorney, or person in a proceeding under the Probate Code or an LPS conservatorship proceeding and the court outside the presence of all parties and attorneys, including written communications sent to the court without copies having been provided to other interested persons.
- (7) “LPS Act” is the Lanterman-Petris-Short Act, part 1 of division 5 of the Welfare and Institutions Code, commencing with section 5000.
- (8) “LPS Conservatorship” is a conservatorship proceeding under chapter 3 of the LPS Act, commencing with section 5350 of the Welfare and Institutions Code, for persons gravely disabled as the result of a mental disorder or impairment by chronic alcoholism.
- (9) A “conservatee” is a person subject to a conservatorship under division 4 of the Probate Code or chapter 3 of the LPS Act, including a proposed conservatee concerning whom a petition for appointment of a conservator has been filed.

- (10) A “matter then pending in the court” in proceedings under the Probate Code or in an LPS conservatorship proceeding refers to a request for relief or opposition in pleadings filed in the proceeding that has not yet been resolved by a decision of the court or an agreement of the parties.
- (11) Concerning a proceeding under the Probate Code or an LPS conservatorship proceeding, the term “open proceeding” refers to a proceeding that has been commenced and has not been concluded by the final discharge of all fiduciaries or otherwise terminated as provided by law, whether or not there is a matter then pending in the court in the proceeding at any point in time.

(b) Ex parte communications by parties and attorneys prohibited

- (1) Except under a stipulation of all parties to the contrary, no ex parte communications may be made by a party or an attorney for a party and the court concerning a matter then pending in the court in proceedings under the Probate Code or in an LPS conservatorship proceeding.
- (2) Except as provided in (c)(1), the court must treat an ex parte communication to the court described in (1) in the same way that an ex parte communication from a party or attorney for a party must be treated in other civil actions or proceedings or in criminal actions.

(c) Ex parte communications received and considered

- (1) Notwithstanding (b)(2), a judicial officer or court staff may receive an ex parte communication concerning an open proceeding under the Probate Code or an open LPS conservatorship proceeding for the limited purpose of ascertaining whether it is a communication described in (b) or a communication described in (c)(2).
- (2) Subject to the requirements of (c)(3), a judicial officer may consider an ex parte communication from a person about a fiduciary’s performance of his or her duties and responsibilities or regarding a conservatee or ward in an open proceeding under the Probate Code or an open LPS conservatorship proceeding. The court may decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person. The court may also take appropriate action, consistent with due process and California law, including one or any combination of the following:
 - (A) Review the court file and take any action that is supported by the record, including ordering a status report or accounting if it appears that a status report or accounting should have been filed by a fiduciary but is delinquent.

- (B) Refer the communication to a court investigator for further action, and receive, consider, and respond to any report from the investigator concerning it;
 - (C) If the communication discloses possible criminal activity, refer the matter to the appropriate law enforcement agency or prosecutor's office;
 - (D) If the communication discloses conduct that might subject a person or organization to disciplinary action on a license, refer the matter to the appropriate licensing agency;
 - (E) If the communication discloses possible elder or dependent adult abuse, or child abuse, refer the matter to appropriate state or local governmental agencies, including adult protective or child protective service departments; and
 - (F) Set a hearing regarding the communication, compel the fiduciary's attendance, and require a response from the fiduciary concerning the issues raised by the communication.
- (3) The court must fully disclose communications described in (c)(2) and any response made by the court to the fiduciary and all other parties to any matter then pending in the court, and their attorneys, unless the court finds good cause to dispense with the disclosure if necessary to protect a conservatee or ward from harm. If the court dispenses with disclosure to any party or attorney, it must make written findings in support of its determination of good cause, and preserve the communication received and any response made by the court. The court may place its findings and the preserved communication under seal or otherwise secure their confidentiality.

Rule 7.10 adopted effective January 1, 2008.

Chapter 2. Notices, Publication, and Service

Rule 7.50. Description of pleading in notice of hearing

Rule 7.51. Service of notice of hearing

Rule 7.52. Service of notice when recipient's address unknown

Rule 7.53. Notice of hearing of amended or supplemented pleadings

Rule 7.54. Publication of Notice of Petition to Administer Estate

Rule 7.55. Ex parte application for order

Rule 7.50. Description of pleading in notice of hearing

The notice of hearing on a pleading filed in a proceeding under the Probate Code must state the complete title of the pleading to which the notice relates.

Rule 7.50 adopted effective January 1, 2003.

Rule 7.51. Service of notice of hearing

(a) Direct notice required

- (1) Except as otherwise permitted in the Probate Code, a notice sent by mail under Probate Code section 1220 must be mailed individually and directly to the person entitled to notice.
- (2) A notice mailed to a person in care of another person is insufficient unless the person entitled to notice is an adult and has directed the party giving notice in writing to send the notice in care of the second person.
- (3) Notices mailed to more than one person in the same household must be sent separately to each person.

(b) Notice to attorney

If a notice is required or permitted to be given to a person who is represented by an attorney of record in the proceeding, the notice must be sent as required in Probate Code section 1214.

(c) Notice to guardian or conservator

- (1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator.
- (2) A copy of the notice must also be sent to the ward or conservatee unless:
 - (A) The court dispenses with such notice; or
 - (B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is personally served on a California- resident guardian or conservator of the estate of the ward or conservatee.

(Subd (c) amended effective January 1, 2004.)

(d) Notice to minor

Except as permitted in Probate Code section 1460.1 for guardianships, conservatorships, and certain protective proceedings under division 4 of the Probate Code, notice to a minor must be sent directly to the minor. A separate copy of the

notice must be sent to the person or persons having legal custody of the minor, with whom the minor resides.

(e) Notice required in a decedent's estate when a beneficiary has died

(1) *Notice when a beneficiary dies after the decedent*

Notice must be sent to the personal representative of a beneficiary who died after the decedent and survived for a period required by the decedent's will. If no personal representative has been appointed for the postdeceased beneficiary, notice must be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate.

(2) *Notice when a beneficiary of the decedent's will dies before the decedent*

When a beneficiary under the will of the decedent died before the decedent or fails to survive the decedent for a period required by the decedent's will, notice must be sent to the persons named in the decedent's will as substitute beneficiaries of the gift to the predeceased beneficiary. If the decedent's will does not make a substitute disposition of that gift, notice must be sent as follows:

- (A) If the predeceased beneficiary is a "transferee" under Probate Code section 21110(c), to the issue of the predeceased beneficiary determined under Probate Code section 240 and to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.
- (B) If the predeceased beneficiary is not a "transferee" under Probate Code section 21110(c), to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

Rule 7.51 amended effective January 1, 2004; adopted January 1, 2003.

Rule 7.52. Service of notice when recipient's address unknown

(a) Declaration of diligent search

Petitioner must file a declaration describing efforts made to locate a person entitled to notice in a proceeding under the Probate Code, but whose address is unknown, before the court will prescribe an alternate form of notice or dispense with notice under (c). The declaration must state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration

must include a description of the attempts to learn of the person's business and residence addresses by:

- (1) Inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding;
- (2) Review of appropriate city telephone directories and directory assistance; and
- (3) Search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside.

(b) Mailed notice to county seat

Mailing notice to a person at a county seat is not a manner of giving notice reasonably calculated to give actual notice.

(c) The court may prescribe or dispense with notice

If a person entitled to notice cannot be located after diligent search, the court may prescribe the manner of giving notice to that person or may dispense with notice to that person.

Rule 7.52 adopted effective January 1, 2003.

Rule 7.53. Notice of hearing of amended or supplemented pleadings

(a) Amended pleading and amendment to a pleading

An amended pleading or an amendment to a pleading requires the same notice of hearing (including publication) as the pleading it amends.

(b) Supplement to a pleading

A supplement to a pleading does not require additional notice of hearing, but a copy of a supplement to a pleading must be served if service of a copy of the pleading was required, unless waived by the court.

Rule 7.53 adopted effective January 1, 2003.

Rule 7.54. Publication of Notice of Petition to Administer Estate

Publication and service of a *Notice of Petition to Administer Estate* (form DE-121) under Probate Code sections 8110–8125 is sufficient notice of any instrument offered for probate that is filed with, and specifically referred to in, the petition for which notice is given. Any other instrument must be presented in an amended petition, and a new notice must be published and served.

Rule 7.54 amended effective January 1, 2007; adopted effective January 1, 2003.

Rule 7.55. Ex parte application for order

(a) Special notice allegation

An ex parte application for an order must allege whether special notice has been requested.

(Subd (a) amended effective January 1, 2007.)

(b) Allegation if special notice requested

If special notice has been requested, the application must identify each person who has requested special notice and must allege that special notice has been given to or waived by each person who has requested it.

(Subd (b) amended effective January 1, 2007.)

(c) Proof of service or waiver of special notice

Proofs of service of special notice or written waivers of special notice must be filed with the application.

(Subd (c) amended effective January 1, 2007.)

Rule 7.55 amended effective January 1, 2007; adopted effective January 1, 2003.

Chapter 3. Pleadings

Rule 7.101. Use of Judicial Council forms

Rule 7.101.5. Electronic Generation of Mandatory Judicial Council Form Orders

Rule 7.102. Titles of pleadings and orders

Rule 7.103. Signature and verification of pleadings

Rule 7.104. Execution and verification of amended pleadings, amendments to pleadings, and supplements to pleadings; use of Judicial Council forms

Rule 7.101. Use of Judicial Council forms

(a) Use of mandatory forms

If a petition, an order, or another document to be submitted to the court is one for which the Judicial Council has adopted a mandatory form, that form must be used. Except as provided in this rule, if the Judicial Council has adopted a mandatory

form in more than one alternative version, one of the alternative versions must be used. If that form is inadequate in a particular situation, an addendum may be attached to it.

(Subd (a) amended and lettered effective January 1, 2007; adopted as untitled subd.)

(b) Alternative mandatory forms

The following forms have been adopted by the Judicial Council as alternative mandatory forms for use in probate proceedings or other proceedings governed by provisions of the Probate Code:

- (1) *Petition for Appointment of Guardian of Minor* (form GC-210) and *Petition for Appointment of Guardian of the Person* (form GC-210(P));
- (2) *Petition for Appointment of Temporary Guardian* (form GC-110) and *Petition for Appointment of Temporary Guardian of the Person* (form GC-110(P));
- (3) *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350) and *Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX).

(Subd (b) amended effective January 1, 2014; adopted effective January 1, 2007; previously amended effective January 1, 2010.)

(c) Use of guardianship petitions

Notwithstanding any other provision of this rule, a party petitioning for appointment of a temporary guardian of the person of a minor may file either form GC-110 or form GC-110(P). A party petitioning for appointment of a general guardian of the person of a minor may file either form GC-210 or form GC-210(P). A party petitioning for appointment of a temporary guardian of the estate or the person and estate of a minor must file form GC-110. A party petitioning for appointment of a general guardian of the estate or the person and estate of a minor must file form GC-210.

(Subd (c) adopted effective January 1, 2007.)

Rule 7.101 amended effective January 1, 2014; adopted effective January 1, 2001; previously amended effective January 1, 2002, January 1, 2007, and January 1, 2010.

Rule 7.101.5. Electronic Generation of Mandatory Judicial Council Form Orders

(a) Applicability

This rule applies to the following mandatory Judicial Council form orders used in proceedings under the Probate Code:

- (1) *Order for Probate* (form DE-140);
- (2) *Order Prescribing Notice* (form DE-200/GC-022);
- (3) *Order Appointing Guardian ad Litem—Probate* (form DE-351/GC-101);
- (4) *Order Dispensing With Notice* (form GC-021);
- (5) *Order Fixing Residence Outside the State of California* (form GC-090);
- (6) *Order Appointing Temporary Guardian or Conservator* (form GC-140);
- (7) *Order Appointing Guardian of Minor* (form GC-240);
- (8) *Order Terminating Guardianship* (form GC-260);
- (9) *Order Appointing Court Investigator* (form GC-330);
- (10) *Ex Parte Order Re Completion of Capacity Declaration—HIPAA* (form GC-334);
- (11) *Order Appointing Probate Conservator* (form GC-340); and
- (12) *Order Authorizing Conservator to Give Consent for Medical Treatment* (form GC-385).

(b) Definitions

- (1) “CCMS” is the California Case Management System, a statewide integrated software application for managing all case types in the superior courts of this state.
- (2) “Electronic generation of a court order” is the electronic generation by a court of a Judicial Council form order listed in (a).

(c) Modification of electronically generated court orders

- (1) Any court using CCMS for case management of proceedings under the Probate Code may modify any of the Judicial Council mandatory form orders listed in (a) by generating the order electronically in a way that includes in

the order signed by the judicial officer only the party-appearance and other preliminary information, findings, and orders actually selected by the court.

- (2) An electronically generated court order under this rule must express the findings and orders selected by the court in substantially the same language as the equivalent findings and orders in the Judicial Council form order, and must provide substantially the same party-appearance and other preliminary information provided in the form order.
- (3) An electronically generated court order under this rule must have the same general appearance as the Judicial Council form order, including case name, case number, and court address captions and a footer, except that the order may be longer or shorter than the form order. The order must contain a recitation in the footer that it is an electronically generated court order in lieu of a mandatory Judicial Council form order under this rule.
- (4) The orders listed in (a) are mandatory forms for all purposes under rule 1.31, except as provided in this rule. An order listed in (a) prepared and submitted to the court by a party or attorney for a party must be prepared on the mandatory Judicial Council form.
- (5) A court that elects to electronically generate court orders under this rule may also use or require the use of the Judicial Council form orders listed in (a) in any individual case or proceeding.

(d) Notification to advisory committees

Any court electing to electronically generate court orders under this rule must send written notice of its election to do so to the Probate and Mental Health and the Court Technology Advisory Committees and submit additional informational reports as requested by either committee.

(e) Expiration date

Unless amended or reenacted by Judicial Council action effective after the effective date of this rule, this rule is repealed effective January 1, 2012.

Rule 7.101.5 adopted effective January 1, 2007.

Rule 7.102. Titles of pleadings and orders

The title of each pleading and of each proposed order must clearly and completely identify the nature of the relief sought or granted.

Rule 7.102 amended effective January 1, 2003; adopted effective January 1, 2001; previously amended effective January 1, 2002.

Rule 7.103. Signature and verification of pleadings

(a) Signature of parties

A pleading must be in writing and must be signed by all persons joining in it.

(b) Verification by parties

All pleadings filed in proceedings under the Probate Code must be verified. If two or more persons join in a pleading, it may be verified by any of them.

(c) Signature and verification by attorney

If a person is absent from the county where his or her attorney's office is located, or for some other cause is unable to sign or verify a pleading, the attorney may sign or verify it, unless the person is, or is seeking to become, a fiduciary appointed in the proceeding.

Rule 7.103 adopted effective January 1, 2003.

Rule 7.104. Execution and verification of amended pleadings, amendments to pleadings, and supplements to pleadings; use of Judicial Council forms

(a) Amended pleading and amendment to a pleading

- (1) All persons required to sign a pleading must sign an amended pleading. One of the persons required to verify a pleading must verify an amended pleading.
- (2) All persons required to sign a pleading must sign an amendment to that pleading. One of the persons required to verify a pleading must verify an amendment to that pleading.
- (3) A Judicial Council form must be used for an amended pleading, with the word "Amended" added to its caption, if the form was used for the pleading that is amended. A Judicial Council form must not be used for an amendment to a pleading.

(b) Supplement to a pleading

- (1) A supplement to a pleading must be signed and verified by one of the persons who were required to sign and verify the pleading that is supplemented. However, the court may, in the exercise of its discretion, accept for filing and consider a supplement to a pleading signed under penalty of perjury by an attorney for the party offering it, where the information contained in the supplement is particularly within the knowledge of the attorney.
- (2) A Judicial Council form must not be used for a supplement to a pleading.

Rule 7.104 adopted effective January 1, 2003.

Chapter 4. Appointment of Executors and Administrators

Rule 7.150. Acknowledgment of receipt of statement of duties and liabilities of personal representative

Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner

Rule 7.150. Acknowledgment of receipt of statement of duties and liabilities of personal representative

Before the court issues letters, each personal representative of a decedent's estate (other than a company authorized to conduct a trust business in California) must execute and file an acknowledgment of receipt of *Duties and Liabilities of Personal Representative* (form DE-147).

Rule 7.150 amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2002.

Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner

(a) Duty to reimburse

In decedents' estates commenced on or after August 18, 2003, and before January 1, 2008, a general personal representative appointed on a *Petition for Probate* (form DE-111) that was not the first-filed petition for appointment of a general personal representative in the proceeding must reimburse the unsuccessful petitioner on the first-filed petition for a portion of the filing fee paid by the unsuccessful petitioner.

(Subd (a) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(b) Amount of reimbursement

The reimbursement required under this rule is in the amount of:

- (1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee that would have been payable on that date for a *Petition for Probate* filed to commence administration of an estate valued at less than \$250,000, less

- (2) The unpaid amount of any costs or sanctions awarded against the unsuccessful petitioner in favor of the party that sought the personal representative's appointment in the proceeding.

(Subd (b) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(c) When reimbursement payable

The personal representative must make the reimbursement payment required under this rule in cash and in full no later than the date the *Inventory and Appraisal* (form DE-160/GC-040) is due under Probate Code section 8800(b), including additional time allowed by the court under that provision.

(Subd (c) amended effective March 1, 2008.)

(d) Payment from estate funds

The reimbursement payment under this rule is an authorized expense of administration and may be made from estate funds without a prior court order.

(e) Receipt from unsuccessful petitioner

The unsuccessful petitioner must give a signed receipt for the reimbursement payment made under this rule.

(Subd (e) amended effective March 1, 2008.)

(f) Personal representative's right to claim refund

A personal representative that is required to but fails to make the reimbursement payment under this rule may not claim a refund of the difference between the estimated filing fee and the corrected filing fee under rule 7.552(c).

(g) Petitioner on dismissed *Petition for Probate*

A petitioner that is eligible to receive a refund of filing fee for a dismissed *Petition for Probate* under rule 7.552(d) is not an unsuccessful petitioner within the meaning of this rule.

(Subd (g) amended effective March 1, 2008; previously amended effective January 1, 2007.)

Rule 7.151 amended effective March 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.

Chapter 5. Bonding of Personal Representatives, Guardians, Conservators, and Trustees

Rule 7.201. Waiver of bond in will

Rule 7.202. Two or more personal representatives

Rule 7.203. Separate bonds for individuals

Rule 7.204. Duty to apply for order increasing bond

Rule 7.205. Independent power to sell real property

Rule 7.206. Bond upon sale of real property

Rule 7.207. Bonds of conservators and guardians

Rule 7.201. Waiver of bond in will

(a) Statement of waiver in petition

If the will waives bond, the Petition for Probate must so state.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001, and January 1, 2002.)

(b) Court's discretion to require bond

The court may require bond if the proposed personal representative resides outside California or for other good cause, even if the will waives bond.

(Subd (b) amended effective January 1, 2001.)

Rule 7.201 amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2001, and January 1, 2002.

Rule 7.202. Two or more personal representatives

If a will admitted to probate names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all of the named persons serve, the court must require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

Rule 7.202 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.203. Separate bonds for individuals

Because a corporate fiduciary (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual cofiduciary, an individual cofiduciary who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate cofiduciary.

Rule 7.203 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.204. Duty to apply for order increasing bond

(a) Ex parte application for order

Immediately upon the occurrence of facts making it necessary or appropriate to increase the amount of the bond, the personal representative, or the guardian or conservator of the estate, must make an ex parte application for an order increasing the bond.

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(b) Attorney's duty

If the personal representative, or the guardian or conservator of the estate, has not already made application under (a), the attorney for the personal representative, or the attorney for the guardian or conservator of the estate, must make the ex parte application immediately upon becoming aware of the need to increase bond.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(c) Amount

- (1) The application by a personal representative under (a) or by the attorney for a personal representative under (b) must show the value of the estate's personal property and the probable annual gross income of the estate.
- (2) The application by a guardian or conservator of the estate under (a) or by the attorney for a guardian or conservator of the estate under (b) must show the value of the estate's personal property, the probable annual gross income of all of the property of the estate, and the sum of the probable annual gross payments of the public benefits of the ward or conservatee identified in Probate Code section 2320(c)(3).
- (3) If the personal representative has full Independent Administration of Estates Act (IAEA) authority or the guardian or conservator of the estate has authority to sell estate real property without court confirmation, the application must also show the amount of the equity in estate real property.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

Rule 7.204 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.205. Independent power to sell real property

If the personal representative requests or has been granted an independent power to sell or hypothecate real estate or to lease it for a term of more than one year, the personal representative must state in the request to fix the amount of the bond the value of the real property less encumbrances.

Rule 7.205 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.206. Bond upon sale of real property

If a bond or additional bond is required in an order confirming sale of real estate, the court must not file the order until the additional bond is filed.

Rule 7.206 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.207. Bonds of conservators and guardians

(a) Bond includes reasonable amount for recovery on the bond

Except as otherwise provided by statute, every conservator or guardian of the estate must furnish a bond that includes an amount determined under (b) as a reasonable amount for the cost of recovery to collect on the bond under Probate Code section 2320(c)(4).

(Subd (a) amended effective January 1, 2010.)

(b) Amount of bond for the cost of recovery on the bond

The reasonable amount of bond for the cost of recovery to collect on the bond, including attorney's fees and costs, under Probate Code section 2320(c)(4) is:

- (1) Ten percent (10%) of the value up to and including \$500,000 of the following:
 - (A) The value of personal property of the estate;
 - (B) The value, less encumbrances, of real property of the estate that the guardian or conservator has the independent power to sell without approval or confirmation of the court under Probate Code sections 2590 and 2591(d);
 - (C) The probable annual income from all assets of the estate; and
 - (D) The probable annual gross payments described in Probate Code section 2320(c)(3); and

- (2) Twelve percent (12%) of the value above \$500,000 up to and including \$1,000,000 of the property, income, and payments described in (1); and
- (3) Two percent (2%) of the value above \$1,000,000 of the property, income, and payments described in (1).

(Subd (b) amended and relettered effective January 1, 2010; adopted as subd (c).)

Rule 7.207 amended effective January 1, 2010; adopted effective January 1, 2008.

Chapter 6. Independent Administration of Estates

Rule 7.250. Report of actions taken under the Independent Administration of Estates Act

Rule 7.250. Report of actions taken under the Independent Administration of Estates Act

(a) Report required

In any accounting, report, petition for preliminary distribution, or petition for final distribution, the petitioner must list and describe all actions taken without prior court approval under the Independent Administration of Estates Act (IAEA) if notice of the proposed action was required. The description of the action must include the following:

- (1) The nature of the action;
- (2) When the action was taken;
- (3) A statement of when and to whom notice was given;
- (4) Whether notice was waived, and if so, by whom; and
- (5) Whether any objections were received.

(Subd (a) amended effective January 1, 2002.)

(b) Actions reported in previous reports

An action taken under the IAEA that was (1) properly listed and described in a prior accounting, report, or petition for distribution, and (2) approved by the court, need not be listed and described in a subsequent account, report, or petition for distribution.

(Subd (b) amended effective January 1, 2007.)

Rule 7.250 amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2002.

Chapter 7. Spousal or Domestic Partner Property Petitions

Rule 7.301. Spousal or domestic partner property petition filed with petition for probate

Rule 7.301. Spousal or domestic partner property petition filed with petition for probate

A petition for spousal or domestic partner property determination or confirmation must be filed separately from a petition for probate of will or for letters of administration, even if both petitions are filed at the same time. The two petitions must be filed under the same case number.

Rule 7.301 amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2002.

Chapter 8. Petitions for Instructions [Reserved]

Chapter 9. Creditors' Claims

Rule 7.401. Personal representative's action on the claim

Rule 7.402. Court's action on the claim

Rule 7.403. Listing all claims in the final report

Rule 7.401. Personal representative's action on the claim

For each creditor's claim filed with the court, the personal representative (whether or not acting under the Independent Administration of Estates Act (IAEA)) must:

- (1) Allow or reject in whole or in part the claim in writing;
- (2) Serve a copy of the allowance or rejection on the creditor and the creditor's attorney; and
- (3) File a copy of the allowance or rejection with proof of service with the court.

Rule 7.401 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.402. Court's action on the claim

Except as to claims of the personal representative or the attorney, if the personal representative has authority to act under the Independent Administration of Estates Act (IAEA), the court must not act on the personal representative's allowance or rejection of a creditor's claim unless good cause is shown.

Rule 7.402 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.403. Listing all claims in the final report

For each claim presented, the personal representative must state in the final report or petition for final distribution:

- (1) The claimant's name;
- (2) The date of filing of the claim;
- (3) The nature of the claim;
- (4) The amount claimed;
- (5) The disposition of the claim; and
- (6) If the claim was rejected, the date of service of the rejection and whether or not a lawsuit was filed.

Rule 7.403 amended effective January 1, 2002; adopted effective January 1, 2000.

Chapter 10. Sales of Real and Personal Property

Rule 7.451. Refusal to show property to prospective buyers

Rule 7.452. Petitioner or attorney required at hearing

Rule 7.453. Petition for exclusive listing

Rule 7.454. Ex parte application for order authorizing sale of securities or other personal property

Rule 7.451. Refusal to show property to prospective buyers

Upon a showing that the fiduciary has denied any bona fide prospective buyer or his or her broker a reasonable opportunity to inspect the property, the court must not confirm the sale but must continue the sale to allow inspection unless good cause is shown for the court to confirm the sale.

Rule 7.451 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.452. Petitioner or attorney required at hearing

The court must not proceed with the hearing on a petition to confirm a sale of property unless the petitioner's attorney or petitioner, if unrepresented, is present.

Rule 7.452 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.453. Petition for exclusive listing

A petition for approval of an exclusive listing under Probate Code section 10150(c) must state the following:

- (1) A description of the property to be sold;
- (2) The name of the broker to be employed;
- (3) A summary of the terms of the exclusive listing agreement or include a copy of the listing agreement; and
- (4) A detailed statement of the facts supporting the "necessity and the advantage" to the estate of having the exclusive listing.

Rule 7.453 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.454. Ex parte application for order authorizing sale of securities or other personal property

An ex parte application for authority to sell or to surrender tangible or intangible personal property must state whether or not the property is specifically devised. If it is specifically devised, the written consent of the specific devisee to the sale or surrender must be filed.

Rule 7.454 adopted effective January 1, 2003.

Chapter 11. Inventory and Appraisal

Rule 7.501. Inventory and Appraisal to show sufficiency of bond

Rule 7.501. Inventory and Appraisal to show sufficiency of bond

(a) Statement required

Every Inventory and Appraisal must contain one of the following statements:

- (1) “Bond is waived”;
- (2) “Bond has been filed in the amount of \$ *(specify amount)* and is insufficient”;
or
- (3) “Bond has been filed in the amount of \$ *(specify amount)* and is sufficient.”

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2002.)

(b) Insufficient bond

If the bond is insufficient, the fiduciary (the personal representative, or the guardian or conservator of the estate), or the attorney for the fiduciary, must immediately make ex parte application as provided in rule 7.204 for an order increasing the amount of the bond.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(c) Statement signed by attorney

The statement required by (a) must be signed by the attorney of record for each fiduciary who has an attorney of record and by each fiduciary who does not.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

Rule 7.501 amended effective January 1, 2007; adopted effective January 1, 2000; previously amended effective January 1, 2002, and January 1, 2003.

Chapter 12. Accounts and Reports of Executors, Administrators, Conservators, and Guardians

Chapter 12 amended effective January 1, 2008.

Rule 7.550. Effect of waiver of account

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

Rule 7.552. Graduated filing fee adjustments for estates commenced on or after August 18, 2003, and before January 1, 2008

Rule 7.553. Graduated filing fee statements for decedents' estates commenced on or after January 1, 2008

Rule 7.575. Accounts of conservators and guardians

Rule 7.550. Effect of waiver of account

(a) Waiver of account

Except as provided in (b), if an accounting is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report required under section 10954(c)(1).

(Subd (a) amended effective January 1, 2007; adopted as part of unlettered subdivision; previously amended effective January 1, 2004.)

(b) Information required in report on waiver of account

The report required when an account has been waived must list the information required by law, including information as to:

- (1) Creditors' claims;
- (2) Sales, purchases, or exchanges of assets;
- (3) Changes in the form of assets;
- (4) Assets on hand;
- (5) Whether the estate is solvent;
- (6) Detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions);
- (7) Costs of administration (if reimbursement of these costs is requested);
- (8) The amount of any fees or commissions paid or to be paid;
- (9) The calculation of such fees or commissions as described in rule 7.705; and
- (10) For decedent's estate proceedings commenced on or after August 18, 2003, the information required by rule 7.552(a) and (b).

(Subd (b) amended effective January 1, 2007; adopted as part of unlettered subdivision; previously amended effective January 1, 2004.)

Rule 7.550 amended effective January 1, 2007; adopted effective January 1, 2003; previously amended effective January 1, 2004.

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

(a) Final account

Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than \$1,000,000 and from which more than \$250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(b) Final report

If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(c) Expiration date of certificate

If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Rule 7.551 adopted effective January 1, 2004.

Rule 7.552. Graduated filing fee adjustments for estates commenced on or after August 18, 2003, and before January 1, 2008

This rule applies to decedents' estate proceedings commenced on or after August 18, 2003, and before January 1, 2008. Rule 7.553 applies to decedents' estate proceedings commenced on or after January 1, 2008.

(a) Separate schedule for graduated fee information

The final account or report filed in every decedent's estate proceeding commenced on or after August 18, 2003, and before January 1, 2008, must include a separate schedule showing the following information:

- (1) The name of each petitioner on the first-filed *Petition for Probate* (form DE-111) in the proceeding;
- (2) The date the first-filed *Petition for Probate* was filed in the proceeding;

- (3) The estimated value of the estate shown in item 3, “estimated value of the estate for filing fee purposes,” of the first-filed *Petition for Probate* in the proceeding;
- (4) The filing fee paid by or for the petitioner on the first-filed *Petition for Probate* in the proceeding; and
- (5) The following information from the inventories filed in the proceeding:
 - (A) The date each partial, supplemental, final, or corrected *Inventory and Appraisal* (form DE-160/GC-040) was filed;
 - (B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal*;
 - (C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal*; and
 - (D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.
- (6) A statement of the amount of filing fee that would have been payable under Government Code section 70650, as amended effective on the date the first-filed *Petition for Probate* was filed in the proceeding, if the total actual appraised value of the estate had been used as the estimated value for filing fee purposes (the “corrected filing fee”);
- (7) Calculation of the difference between the estimated filing fee paid under Government Code section 70650 on filing the first *Petition for Probate* in the proceeding (the “estimated filing fee”) and the “corrected filing fee,” as determined under (6) and subdivision (e) of this rule; and
- (8) The following information concerning filing fee reimbursement payments made by a personal representative in the proceeding under rule 7.151:
 - (A) The amount of each payment;
 - (B) The date each payment was made; and
 - (C) The name, address, and telephone number of the payee and of any attorney of record for the payee in the proceeding.

(Subd (a) amended effective March 1, 2008; previously amended effective January 1, 2007.)

(b) If estimated filing fee less than corrected filing fee

If the estimated filing fee is less than the corrected filing fee, as determined under (a) and (e), the petition filed with the final account or report must allege that the difference between them has been paid to the clerk of the court. A copy of the clerk's receipt for the payment, and, if applicable, a receipt or other evidence satisfactory to the court of payment of the reimbursement required under rule 7.151, must be attached as an exhibit to the account or report.

(c) If estimated filing fee more than corrected filing fee

- (1) Subject to the provisions of rule 7.151, if the estimated filing fee is more than the corrected filing fee, as determined under (a) and (e), the personal representative of the decedent's estate is eligible under this subdivision to receive a refund of the difference between them, without interest.
- (2) The personal representative must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.
- (3) Unless authorized to retain a reserve against closing expenses that expressly is to include the court's refund payment after the personal representative's discharge, the personal representative must not apply for a discharge while an application for refund of filing fee under this subdivision is pending and before the court's refund payment is received.

(d) Refund on voluntarily dismissed *Petition for Probate*

- (1) A petitioner that files a *Petition for Probate* on or after August 18, 2003, and voluntarily dismisses the petition at any time within 90 days after it is filed and before an order granting or denying the petition is filed, is eligible under this subdivision to receive a refund, without interest, of all filing fees paid in excess of the filing fees that would have been payable on the original filing date for a *Petition for Probate* of an estate valued at less than \$250,000.
- (2) The petitioner on a dismissed *Petition for Probate* under (1) must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.

(Subd (d) amended effective March 1, 2008.)

(e) Additional adjustment in corrected filing fee in insolvent estates

If the property of the estate is insufficient to pay the expenses of administration in full, the court may approve a determination of the corrected filing fee that reflects the proportionate reduction of those expenses under Probate Code section 11420. The corrected filing fee may not be reduced below the minimum fee required by Government Code section 70650 on the date the estimated fee was paid.

(Subd (e) amended effective March 1, 2008.)

(f) Sample schedule of graduated fee information

The schedule of graduated fee information required under (a) may be substantially as follows:

SCHEDULE ____

Graduated Filing Fee Information

1. The first-filed *Petition for Probate* in this proceeding was filed on [Date] by [name of each petitioner].
2. The estimated value of the estate for filing fee purposes shown on the first-filed *Petition for Probate* in this proceeding is \$_____.
3. The filing fee paid by or for the petitioners on the first-filed *Petition for Probate* in this proceeding was \$_____.
4. The following inventories have been filed in this proceeding:

Type	Date Filed	Appraised Value
[Partial no. ____]	[09/30/09]	\$
[Partial no. ____]		\$
Final		\$
[Supplemental]		\$
[Correcting]		\$ (or \$) _____
Total appraised value of estate:		\$ _____

5. Corrected Filing Fee:

Total appraised value of estate: \$

Filing fee as of the date in 1 above, based on total appraised value of estate: \$

Adjustment to reflect proportional reduction of expenses of administration for insolvent estate under Cal. Rules of Court, rule 7.552(e): (\$ _____)

Corrected Filing Fee: \$ _____

6. Difference between estimated and corrected filing fee:

Estimated filing fee from 3 above: \$

Corrected filing fee from 5 above: (\$ _____)

Difference: \$ (or \$) _____

7. Filing fee reimbursements under rule 7.151:

Payee(s) [Name, address, and telephone number of each payee and attorney of record in the proceeding]	Date Paid [10/25/09]	Amount \$
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(Subd (f) amended effective March 1, 2008; previously amended effective January 1, 2007.)

Rule 7.552 amended effective March 1, 2008; adopted effective January 1, 2004; previously amended effective January 1, 2007.

Rule 7.553. Graduated filing fee statements for decedents' estates commenced on or after January 1, 2008

This rule applies to decedents' estates commenced on or after January 1, 2008.

(a) Separate schedule for graduated fee information

The final account or report or petition for final distribution filed in every decedent's estate proceeding commenced on or after January 1, 2008, must include a separate schedule showing the following information:

- (1) The date the first-filed *Petition for Probate* (form DE-111) was filed in the proceeding; and
- (2) The following information from the inventories filed in the proceeding:
 - (A) The date each partial, supplemental, final, or corrected *Inventory and Appraisal* (form DE-160/GC-040) was filed;
 - (B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal*;
 - (C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal*; and
 - (D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.

(b) Adjustment in corrected filing fee in insolvent estates

If the property of the estate is insufficient to pay expenses of administration in full, the court may approve a determination of the corrected filing fee under this rule that reflects the proportionate reduction of those expenses under Probate Code section 11420. The corrected filing fee may not be reduced below the minimum fee required by Government Code section 70650 on the date the estate was commenced.

(c) Sample schedule of filing fee information

The schedule of graduated fee information required under (a) may be substantially as follows:

SCHEDULE ____

Graduated Filing Fee Information

1. The first-filed *Petition for Probate* in this proceeding was filed on [Date] by [name of each petitioner].
2. The following inventories have been filed in this proceeding:

Type	Date Filed	Appraised Value
[Partial no. ____]	[09/30/09]	\$
[Partial no. ____]		\$
Final		\$
[Supplemental]		\$
[Correcting]		\$ (or \$) _____
Total appraised value of estate:		\$ _____

3. Graduated Filing Fee:

Total appraised value of estate: \$

Filing fee as of the date in 1 above, based on total appraised value of estate: \$

Adjustment to reflect proportional reduction of expenses of administration for insolvent estate under Cal. Rules of Court, rule 7.553(b): (\$ _____)

Corrected Filing Fee: \$ _____

Rule 7.553 adopted effective March 1, 2008.

Rule 7.575. Accounts of conservators and guardians

This rule defines standard and simplified accountings filed by conservators and guardians under Probate Code section 2620(a), provides when each type of accounting must or may be filed, and prescribes the use of Judicial Council accounting forms in both types of accountings.

(a) Standard and simplified accountings

A standard accounting lists receipts and disbursements in subject-matter categories, with each receipt and disbursement category subtotaled. A simplified accounting lists receipts and disbursements chronologically, by receipt or payment date, without subject-matter categories.

(b) Standard accounting authorized or required

A conservator or guardian may file any accounting required or authorized by Probate Code section 2620 as a standard accounting under this rule and must file a standard accounting if:

- (1) The estate contains income real property;
- (2) The estate contains a whole or partial interest in a trade or business;
- (3) The appraised value of the estate is \$500,000 or more, exclusive of the conservatee's or ward's personal residence;
- (4) Except as provided in (c), Schedule A (receipts) or Schedule C (disbursements) prepared in a simplified accounting format exceeds five pages in length; or
- (5) The court directs that a standard accounting be filed.

(c) Simplified accounting authorized

A conservator or guardian may file a simplified accounting in all cases not listed in (b). If required by this rule to file a standard accounting only because a receipts or disbursements schedule is longer than five pages under (b)(4), a conservator or guardian may file a simplified accounting, except for that schedule, which must be prepared in a standard accounting format.

(d) Standard and simplified accounting forms

Judicial Council forms designated as GC-400 are standard accounting forms. Forms designated as GC-405 are simplified accounting forms. Forms designated as GC-400/GC-405 are forms for both standard and simplified accountings. Each form is

also designated by a suffix following its accounting designator that identifies the form's intended use, based either on the form's schedule letter as shown in the *Summary of Account* (form GC-400(SUM)/GC-405(SUM)) or the form's subject matter.

(e) Mandatory and optional forms

- (1) Judicial Council accounting forms adopted as mandatory forms must be used by standard and simplified accounting filers. Judicial Council accounting forms approved as optional forms may be used by all accounting filers. Judicial Council accounting forms designated as GC-400/GC-405 that are approved as optional forms may be used by standard accounting filers but must be used by simplified accounting filers.
- (2) Standard accounting filers electing not to use optional Judicial Council accounting forms must:
 - (A) State receipts and disbursements in the subject-matter categories specified in the optional Judicial Council forms for receipts and disbursements schedules;
 - (B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required by the applicable Judicial Council accounting form; and
 - (C) Provide the information in the same general layout as the applicable Judicial Council accounting form, but instructional material contained in the form and material contained or requested in the form's header and footer need not be provided.

(f) Required information in all accounts

Notwithstanding any other provision of this rule and the Judicial Council accounting forms, all standard and simplified accounting filers must provide all information in their accounting schedules or their *Summary of Account* that is required by Probate Code sections 1060–1063 and must provide all information required by Probate Code section 1064 in the petition for approval of their account or the report accompanying their account.

Rule 7.575 adopted effective January 1, 2008.

Chapter 13. Taxes [Reserved]

Chapter 14. Preliminary and Final Distributions

Rule 7.650. Decree of distribution establishing testamentary trusts

Rule 7.651. Description of property in petition for distribution

Rule 7.652. Allegations in petition for distribution concerning character of property

Rule 7.650. Decree of distribution establishing testamentary trusts

(a) Determining the trust

Upon distribution, the court must:

- (1) Determine whether or not a valid trust has been created by the will;
- (2) Determine the terms of the trust; and
- (3) Order distribution of the trust property to the trustee.

(Subd (a) amended effective January 1, 2002.)

(b) Terms of the trust

The order for distribution must incorporate the terms of the trust so as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions must be stated in the present tense and in the third person instead of quoting the will verbatim.

(Subd (b) amended effective January 1, 2002.)

Rule 7.650 amended effective January 1, 2002; adopted effective January 1, 2000.

Rule 7.651. Description of property in petition for distribution

(a) Property description

A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated in the petition by reference. If an account is filed with the petition, the description must be included in a schedule in the account.

(b) Specific description requirements

The description under (a) must:

- (1) Include the amount of cash on hand;
- (2) Indicate whether promissory notes are secured or unsecured, and describe in detail the security interest of any secured notes;

- (3) Include the complete legal description, street address (if any), and assessor's parcel number (if any) of real property; and
- (4) Include the complete description of each individual security held in "street name" in security brokers' accounts.

Rule 7.651 adopted effective January 1, 2004.

Rule 7.652. Allegations in petition for distribution concerning character of property

(a) Required allegations

If the character of property to be distributed may affect the distribution, a petition for distribution must allege:

- (1) The character of the property to be distributed, whether separate, community, or quasi-community; and
- (2) That the community or quasi-community property to be distributed is either the decedent's one-half interest only, or the entire interest of the decedent and the decedent's spouse.

(b) Compliance with Probate Code section 13502

If any property is to be distributed outright to the surviving spouse, a written election by the surviving spouse that complies with Probate Code section 13502 must have been filed, and the petition must show the filing date of the election.

Rule 7.652 adopted effective January 1, 2004.

Chapter 15. Compensation of Personal Representatives and Attorneys

Rule 7.700. Compensation paid in advance

Rule 7.701. Allowance on account of statutory compensation

Rule 7.702. Petition for extraordinary compensation

Rule 7.703. Extraordinary compensation

Rule 7.704. Apportionment of statutory compensation

Rule 7.705. Calculation of statutory compensation

Rule 7.706. Compensation when personal representative is an attorney

Rule 7.707. Application of compensation provisions

Rule 7.700. Compensation paid in advance

(a) No compensation in advance of court order

The personal representative must neither pay nor receive, and the attorney for the personal representative must not receive, statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment.

(b) Surcharge for payment or receipt of advance compensation

In addition to removing the personal representative and imposing any other sanctions authorized by law against the personal representative or the attorney for the personal representative, the court may surcharge the personal representative for payment or receipt of statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment. The surcharge may include interest at the legal rate from the date of payment.

Rule 7.700 adopted effective January 1, 2003.

Rule 7.701. Allowance on account of statutory compensation

The court may authorize an allowance of statutory fees or commissions on account before approval of the final account and the decree of final distribution. Any allowance made before settlement of the final account must be low enough to avoid the possibility of overpayment. The allowance:

- (1) Must be based on the estimated amount of statutory compensation payable on the estate determined as of the date of the petition for allowance;
- (2) Must be in proportion to the work actually performed; and
- (3) Must be based upon a detailed description of the ordinary services performed and remaining to be performed.

Rule 7.701 adopted effective January 1, 2003.

Rule 7.702. Petition for extraordinary compensation

A petition for extraordinary compensation must include, or be accompanied by, a statement of the facts upon which the petition is based. The statement of facts must:

- (1) Show the nature and difficulty of the tasks performed;
- (2) Show the results achieved;
- (3) Show the benefit of the services to the estate;
- (4) Specify the amount requested for each category of service performed;

- (5) State the hourly rate of each person who performed services and the hours spent by each of them;
- (6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent; and
- (7) State the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of a final account or report.

Rule 7.702 adopted effective January 1, 2003.

Rule 7.703. Extraordinary compensation

(a) Discretion of the court

An award of extraordinary compensation to the personal representative or to the attorney for the personal representative is within the discretion of the court. The court may consider the amount of statutory compensation when determining compensation for extraordinary services.

(b) Examples of extraordinary services by personal representative

The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the personal representative:

- (1) Selling, leasing, exchanging, financing, or foreclosing real or personal property;
- (2) Carrying on decedent's business if necessary to preserve the estate or under court order;
- (3) Preparing tax returns; and
- (4) Handling audits or litigation connected with tax liabilities of the decedent or of the estate.

(c) Examples of extraordinary services by attorney

The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the attorney for the personal representative:

- (1) Legal services in connection with the sale of property held in the estate;
- (2) Services to secure a loan to pay estate debts;
- (3) Litigation undertaken to benefit the estate or to protect its interests;

- (4) Defense of the personal representative's account;
- (5) Defense of a will contested after its admission to probate;
- (6) Successful defense of a will contested before its admission to probate;
- (7) Successful defense of a personal representative in a removal proceeding;
- (8) Extraordinary efforts to locate estate assets;
- (9) Litigation in support of attorney's request for extraordinary compensation, where prior compensation awards are not adequate compensation under all the circumstances;
- (10) Coordination of ancillary administration; and
- (11) Accounting for a deceased, incapacitated, or absconded personal representative under Probate Code section 10953.

(d) Contingency fee agreement for extraordinary legal services

An attorney may agree to perform extraordinary services for a personal representative on a contingent-fee basis on the following conditions:

- (1) The agreement must be in writing and must comply with section 6147 of the Business and Professions Code;
- (2) The court must approve the agreement in the manner provided in Probate Code section 10811(c), based on findings that the compensation under the agreement is just and reasonable, that the agreement is to the advantage of the estate, and that the agreement is in the best interest of the persons interested in the estate; and
- (3) In the absence of an emergency or other unusual circumstances, the personal representative must obtain the court's approval of the contingency fee agreement before services are performed under it.

(Subd (d) amended effective January 1, 2007.)

(e) Use of paralegals in the performance of extraordinary services

Extraordinary legal services may include the services of a paralegal as defined in Business and Professions Code section 6450(a) only if the request for extraordinary legal fees for the paralegal's services:

- (1) Describes the qualifications of the paralegal (including education, certification, continuing education, and experience). The description must state that the paralegal:
 - (A) Acted under the direction and supervision of an attorney;
 - (B) Satisfies one or more of the minimum qualifications specified in Business and Professions Code section 6450(c); and
 - (C) Has completed mandatory continuing education required by Business and Professions Code section 6450(d) for the last two-year certification period ending before the year during which any part of the paralegal's services were performed.
- (2) States the hours spent by the paralegal and the hourly rate requested for the paralegal's services;
- (3) Describes the services performed by the paralegal;
- (4) States why it was appropriate to use the paralegal's services in the particular case; and
- (5) Demonstrates that the total amount requested for the extraordinary services of the attorney and the paralegal does not exceed the amount appropriate if the attorney had performed the services without the paralegal's assistance.

(Subd (e) amended effective July 1, 2010.)

Rule 7.703 amended effective July 1, 2010; adopted effective January 1, 2003; previously amended effective January 1, 2007.

Rule 7.704. Apportionment of statutory compensation

(a) One statutory commission and fee

There is one statutory commission for ordinary services by the personal representative of the estate and one statutory attorney fee for ordinary legal services to the personal representative, regardless of the number of personal representatives or attorneys performing the services. The court may apportion statutory commissions and fees among multiple, successive, and concurrent personal representatives or attorneys. The apportionment must be based on the agreement of the multiple personal representatives or attorneys or, if there is no agreement, according to the services actually rendered by each of them.

(b) Notice of hearing

If there has been a change of personal representative or a substitution of attorneys for the personal representative, notice of hearing of any interim or final petition seeking or waiving an award of statutory compensation must be given to all prior personal representatives or attorneys unless:

- (1) A waiver of notice executed by all prior personal representatives or attorneys is on file or is filed with the petition;
- (2) A written, signed agreement on the allocation of statutory commissions or fees between the present personal representative or attorney and all prior personal representatives or attorneys is on file or is included in or filed with the petition; or
- (3) The court's file and the petition demonstrate that the commissions or fees of the prior personal representatives or attorneys have been previously provided for and allowed by the court.

Rule 7.704 adopted effective January 1, 2003.

Rule 7.705. Calculation of statutory compensation

(a) Account filed

A petition for statutory commissions or attorney fees must state the amount of statutory compensation payable and set forth the estate accounted for and the calculation of statutory compensation. The calculation must be stated in the petition in substantially the following form:

COMMISSION OR FEE BASE

Inventory and Appraisal	\$ _____
Receipts, Excluding Principal	\$ _____
Gains on Sales	\$ _____
Losses on Sales	\$ (_____)

TOTAL COMMISSION OR FEE BASE \$ _____

COMMISSION OR FEE COMPUTATION

4% on first \$100,000	(\$ _____) ¹	\$ _____ ²
3% on next \$100,000	(\$ _____)	\$ _____
2% on next \$800,000	(\$ _____)	\$ _____
1% on next \$9,000,000	(\$ _____)	\$ _____
½ of 1% on next \$15,000,000	(\$ _____)	\$ _____

Amount requested from the court for estates above \$25,000,000	(\$ _____)	\$ _____
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TOTAL COMMISSION OR FEE

\$ _____ ³

1. Enter in this column the amount of the estate accounted for in each category. The sum of the entries in this column would equal the total commission or fee base.
2. Enter in this column the product of the amount of the estate accounted for in each category multiplied by the percentage for that category.
3. Enter here the sum of the products entered in this column.

(b) Account waived

When an account has been waived, the report must contain the information required by rule 7.550. If the report is accompanied by a request for statutory commissions or fees, the basis for their computation must be included in the petition substantially in the form provided in (a). Notwithstanding the waiver of account, if the petition and report requests statutory commissions or fees based on any amount other than the amount of the Inventory and Appraisal, detailed schedules of receipts and gains and losses on sales must be included.

Rule 7.705 adopted effective January 1, 2003.

Rule 7.706. Compensation when personal representative is an attorney

(a) Personal representative's compensation only

Notwithstanding the provisions of the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation but may not receive compensation for legal services as the attorney for the personal representative unless the court approves the right to compensation for legal services in advance and finds the arrangement is to the advantage, benefit, and best interest of the decedent's estate.

(b) Agreement not to participate in compensation

A law firm of which the personal representative is a partner or shareholder may request compensation for legal services in addition to the personal representative's compensation if a written agreement not to participate in each other's compensation, signed by the personal representative and by authorized representatives of the law firm, has been filed in the estate proceeding.

Rule 7.706 adopted effective January 1, 2003.

Rule 7.707. Application of compensation provisions

For proceedings commenced after June 30, 1991, the law in effect on the date of the court's order awarding statutory compensation determines the amount of such compensation.

Rule 7.707 adopted effective January 1, 2003.

Chapter 16. Compensation in All Matters Other Than Decedents' Estates

Rule 7.750. Application of rules to guardianships and conservatorships

Rule 7.751. Petitions for orders allowing compensation for guardians or conservators and their attorneys

Rule 7.752. Court may order accounting before allowing compensation

Rule 7.753. Contingency fee agreements in guardianships and conservatorships

Rule 7.754. Use of paralegals in the performance of legal services for the guardian or conservator

Rule 7.755. Advance payments and periodic payments to guardians, conservators, and to their attorneys on account for future services

Rule 7.756. Compensation of conservators and guardians

Rule 7.776. Compensation of trustees

Rule 7.750. Application of rules to guardianships and conservatorships

The rules in this chapter apply to guardianships and conservatorships under division 4 of the Probate Code (Prob. Code, § 1400 et seq.) and to conservatorships under the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5350–5371). They do not apply to guardianships under chapter 2 of division 2 of the Welfare and Institutions Code (Welf. & Inst. Code, § 200 et seq.). Under Probate Code section 2646, the rules in this chapter applicable to guardianships and conservatorships apply only to compensation payable from the estate of the ward or conservatee or from money or property recovered or collected for the estate of the ward or conservatee.

Rule 7.750 adopted effective January 1, 2003.

Rule 7.751. Petitions for orders allowing compensation for guardians or conservators and their attorneys

(a) Petition for allowance of compensation for services performed before appointment of guardian or conservator

A petition for allowance of compensation to a guardian or conservator or to the attorney for a guardian or conservator may include a request for compensation for services rendered before an order appointing a guardian or conservator. The petition must show facts demonstrating the necessity for preappointment services.

(Subd (a) amended effective January 1, 2007.)

(b) Required showing in petition for allowance of compensation

All petitions for orders fixing and allowing compensation must comply with the requirements of rule 7.702 concerning petitions for extraordinary compensation in decedents' estates, to the extent applicable to guardianships and conservatorships, except that the best interest of the ward or conservatee is to be considered instead of the interest of beneficiaries of the estate.

Rule 7.751 amended effective January 1, 2007; adopted effective January 1, 2003.

Rule 7.752. Court may order accounting before allowing compensation

Notwithstanding the time period after which a petition may be filed for an allowance of compensation to a guardian, conservator, or an attorney for a guardian or conservator, the court may order the guardian or conservator to file an accounting before or at the time a petition for an allowance of compensation is filed or heard.

Rule 7.752 adopted effective January 1, 2003.

Rule 7.753. Contingency fee agreements in guardianships and conservatorships

A guardian or conservator of the estate may contract with an attorney for a contingency fee for the attorney's services on behalf of the ward or conservatee, or the estate, in connection with a matter that is of a type customarily the subject of a contingency fee agreement, if the court has authorized the guardian or conservator to do so, or if the agreement has been approved by the court under Probate Code section 2644. The agreement must also satisfy the requirements of rule 7.703(d)(1).

Rule 7.753 adopted effective January 1, 2003.

Rule 7.754. Use of paralegals in the performance of legal services for the guardian or conservator

An attorney for a guardian or conservator may use the services of a paralegal acting under the direction and supervision of the attorney. A request for an allowance of compensation for the services of a paralegal must satisfy the requirements of rule 7.703(e).

Rule 7.754 adopted effective January 1, 2003.

Rule 7.755. Advance payments and periodic payments to guardians, conservators, and to their attorneys on account for future services

(a) No advance payments

A guardian or conservator must neither pay nor receive, and the attorney for a guardian or conservator must not receive, any payment from the estate of the ward or conservatee for services rendered in advance of an order of the court authorizing the payment. If an advance payment is made or received, the court may surcharge the guardian or conservator in the manner provided in rule 7.700(b), in addition to removing the guardian or conservator or imposing any other sanction authorized by law on the guardian or conservator or on the attorney.

(b) Periodic payments to attorneys on account

A guardian or conservator may request the court to authorize periodic payment of attorney fees on account of future services under Probate Code section 2643 on a showing of an ongoing need for legal services.

Rule 7.755 adopted effective January 1, 2003.

Rule 7.756. Compensation of conservators and guardians

(a) Standards for determining just and reasonable compensation

The court may consider the following nonexclusive factors in determining just and reasonable compensation for a conservator from the estate of the conservatee or a guardian from the estate of the ward:

- (1) The size and nature of the conservatee's or ward's estate;
- (2) The benefit to the conservatee or ward, or his or her estate, of the conservator's or guardian's services;
- (3) The necessity for the services performed;
- (4) The conservatee's or ward's anticipated future needs and income;
- (5) The time spent by the conservator or guardian in the performance of services;
- (6) Whether the services performed were routine or required more than ordinary skill or judgment;
- (7) Any unusual skill, expertise, or experience brought to the performance of services;
- (8) The conservator's or guardian's estimate of the value of the services performed; and
- (9) The compensation customarily allowed by the court in the community where the court is located for the management of conservatorships or guardianships of similar size and complexity.

(b) No single factor determinative

No single factor listed in (a) should be the exclusive basis for the court's determination of just and reasonable compensation.

(c) No inflexible maximum or minimum compensation or maximum approved hourly rate

This rule is not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

Rule 7.756 adopted effective January 1, 2008.

Rule 7.776. Compensation of trustees

In determining or approving compensation of a trustee, the court may consider, among other factors, the following:

- (1) The gross income of the trust estate;
- (2) The success or failure of the trustee's administration;
- (3) Any unusual skill, expertise, or experience brought to the trustee's work;
- (4) The fidelity or disloyalty shown by the trustee;
- (5) The amount of risk and responsibility assumed by the trustee;
- (6) The time spent in the performance of the trustee's duties;
- (7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and
- (8) Whether the work performed was routine, or required more than ordinary skill or judgment.

Rule 7.776 renumbered effective January 1, 2008; adopted as rule 7.756 effective January 1, 2003; previously amended effective January 1, 2007.

Chapter 17. Contested Hearings and Trials

Rule 7.801. Objections and responses

Rule 7.801. Objections and responses

If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.

Rule 7.801 adopted effective January 1, 2000.

Chapter 18. Discovery [Reserved]

Chapter 19. Trusts

Rule 7.901. Trustee's accounts

Rule 7.902. Beneficiaries to be listed in petitions and accounts

Rule 7.903. Trusts funded by court order

Rule 7.901. Trustee's accounts

(a) Period covered

A trustee's account must state the period covered by the account.

(Subd (a) amended effective January 1, 2002.)

(b) First account

The first account in a testamentary trust must reconcile the initial assets on hand with the decree of distribution of the estate.

(Subd (b) amended effective January 1, 2002.)

(c) Principal and income

All trustee's accounts in a trust that distributes income to a beneficiary must allocate receipts and disbursements between (1) principal receipts and disbursements, and (2) income receipts and disbursements.

(Subd (c) amended effective January 1, 2002.)

Rule 7.901 amended effective January 1, 2002; adopted effective January 1, 2001.

Rule 7.902. Beneficiaries to be listed in petitions and accounts

A petition and account involving a trust must state the names and last known addresses of all vested or contingent beneficiaries, including all persons in being who may or will

receive income or corpus of the trust, provided, however, that (1) during the time that the trust is revocable and the person holding the power to revoke the trust is competent, the names and last known addresses of beneficiaries who do not hold the power to revoke do not need to be stated, and (2) the petition or account does not need to state the name and last known address of any beneficiary who need not be given notice under Probate Code section 15804.

Rule 7.902 amended effective January 1, 2007; adopted effective January 1, 2002.

Rule 7.903. Trusts funded by court order

(a) Definitions

- (1) “Trust funded by court order” under this rule means and refers to a trust that will receive funds under Probate Code section 2580 et seq. (substituted judgment); section 3100 et seq. (proceedings for particular transactions involving disabled spouses or registered domestic partners); or section 3600 et seq. (settlement of claims or actions or disposition of judgments involving minors or persons with disabilities).
- (2) “Continuing jurisdiction of the court” under (b) means and refers to the court’s continuing subject matter jurisdiction over trust proceedings under division 9 of the Probate Code (Prob. Code, § 15000 et seq.).
- (3) “Court supervision under the Probate Code” under (b) means and refers to the court’s authority to require prior court approval or subsequent confirmation of the actions of the trustee as for the actions of a guardian or conservator of the estate under division 4 of the Probate Code (Prob. Code, § 1400 et seq.).

(b) Continuing jurisdiction and court supervision

The order creating or approving the funding of a trust funded by court order must provide that the trust is subject to the continuing jurisdiction of the court and may provide that the trust is to be subject to court supervision under the Probate Code.

(c) Required provisions in trust instruments

Except as provided in (d), unless the court otherwise orders for good cause shown, trust instruments for trusts funded by court order must:

- (1) Not contain “no-contest” provisions;
- (2) Prohibit modification or revocation without court approval;
- (3) Clearly identify the trustee and any other person with authority to direct the trustee to make disbursements;

- (4) Prohibit investments by the trustee other than those permitted under Probate Code section 2574;
- (5) Require persons identified in (3) to post bond in the amount required under Probate Code section 2320 et seq.;
- (6) Require the trustee to file accounts and reports for court approval in the manner and frequency required by Probate Code sections 1060 et seq. and 2620 et seq.;
- (7) Require court approval of changes in trustees and a court order appointing any successor trustee; and
- (8) Require compensation of the trustee, the members of any advisory committee, or the attorney for the trustee, to be in just and reasonable amounts that must be fixed and allowed by the court. The instrument may provide for periodic payments of compensation on account, subject to the requirements of Probate Code section 2643 and rule 7.755.

(Subd (c) amended effective January 1, 2007; previously amended effective July 1, 2005.)

(d) Trust instruments for smaller trusts

Unless the court otherwise orders for good cause shown, the requirements of (c)(5)–(8) of this rule do not apply to trust instruments for trusts that will have total assets of \$20,000 or less after receipt of the property ordered by the court.

Rule 7.903 amended effective January 1, 2007; adopted effective January 1, 2005; previously amended effective July 1, 2005.

Advisory Committee Comment

Subdivision (a) of this rule defines a court-funded trust as a product of three court proceedings. Two of these—a petition for substituted judgment in a probate conservatorship (Prob. Code, § 2580) and a proceeding for a particular transaction in the property of an impaired spouse or domestic partner without a conservator (Prob. Code, § 3100; Fam. Code, § 297.5)—are regularly heard in the probate department of the court. The third proceeding, an application for an order approving the settlement of a minor’s claim or a pending action involving a minor or person with a disability or approving the disposition of the proceeds of a judgment in favor of a minor or person with a disability (Prob. Code, § 3600), may be heard in either a probate or a civil department.

The Judicial Council has adopted standard 7.10 of the Standards of Judicial Administration to address proceedings under Probate Code section 3600 that involve court-funded trusts and are heard in civil departments. The standard makes two recommendations concerning the expertise of judicial officers who hear these proceedings on trust issues. The recommendations are to develop practices and procedures that (1) provide for determination of the trust issues in these matters by the probate department of the court or by a judicial officer who regularly hears probate

proceedings or (2) ensure that judicial officers who hear these matters have experience or receive training in substantive and technical issues involving trusts, including special needs trusts.

Chapter 20. Claims of Minors and Persons With Disabilities

Rule 7.950. Petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

Rule 7.950.5 Expedited petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

Rule 7.951. Disclosure of the attorney's interest in a petition to compromise a claim

Rule 7.952. Attendance at hearing on the petition to compromise a claim

Rule 7.953. Order for the deposit of funds of a minor or a person with a disability

Rule 7.954. Petition for the withdrawal of funds deposited for a minor or a person with a disability

Rule 7.955. Attorney's fees for services to a minor or a person with a disability

Rule 7.950. Petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

A petition for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 of the Probate Code (commencing with section 3600) or Code of Civil Procedure section 372 must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise, covenant, settlement, or disposition. Except as provided in rule 7.950.5, the petition must be prepared on a fully completed *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350).

Rule 7.950 amended effective January 1, 2010; adopted effective January 1, 2002; previously amended effective January 1, 2007.

Rule 7.950.5 Expedited petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

(a) Authorized use of expedited petition

Notwithstanding the provisions of rule 7.950, a petitioner for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed

claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 of the Probate Code (commencing with section 3600) or Code of Civil Procedure section 372 may, in the following circumstances, satisfy the information requirements of that rule by fully completing the *Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX):

- (1) The petitioner is represented by an attorney authorized to practice in the courts of this state;
- (2) The claim is not for damages for the wrongful death of a person;
- (3) No portion of the net proceeds of the compromise, settlement, or judgment in favor of the minor or disabled claimant is to be placed in a trust;
- (4) There are no unresolved disputes concerning liens to be satisfied from the proceeds of the compromise, settlement, or judgment;
- (5) The petitioner's attorney did not become involved in the matter at the direct or indirect request of a person against whom the claim is asserted or an insurance carrier for that person;
- (6) The petitioner's attorney is neither employed by nor associated with a defendant or insurance carrier in connection with the petition;
- (7) If an action has been filed on the claim:
 - (A) All defendants that have appeared in the action are participating in the compromise; or
 - (B) The court has finally determined that the settling parties entered into the settlement in good faith;
- (8) The judgment for the minor or disabled claimant (exclusive of interest and costs) or the total amount payable to the minor or disabled claimant and all other parties under the proposed compromise or settlement is \$50,000 or less or, if greater:
 - (A) The total amount payable to the minor or disabled claimant represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties; and
 - (B) All proposed contributing parties would be substantially unable to discharge an adverse judgment on the minor's or disabled person's

claim from assets other than the proceeds of their liability insurance policies; and

(9) The court does not otherwise order;

(b) Determination of expedited petition

An expedited petition must be determined by the court not more than 35 days after it is filed, unless a hearing is requested, required, or scheduled under (c) or the time for determination is extended for good cause by order of the court.

(c) Hearing on expedited petition

- (1) The expedited petition must be determined by the court without a hearing unless a hearing is requested by the petitioner at the time the expedited petition is filed, an objection or other opposition to the petition is filed by an interested party, or a hearing is scheduled by the court under (2) or (3).
- (2) The court may on its own motion elect to schedule and conduct a hearing on an expedited petition. The court must make its election to schedule the hearing and must give notice of its election and the date, time, and place of the hearing to the petitioner and all other interested parties not more than 25 days after the date the expedited petition is filed.
- (3) If the court decides not to grant an expedited petition in full as requested, it must schedule a hearing and give notice of its intended ruling and the date, time, and place of the hearing to the petitioner and all other interested parties within the time provided in (2).

Rule 7.950.5 adopted effective January 1, 2010.

Rule 7.951. Disclosure of the attorney's interest in a petition to compromise a claim

If the petitioner has been represented or assisted by an attorney in preparing the petition to compromise the claim or in any other respect with regard to the claim, the petition must disclose the following information:

- (1) The name, state bar number, law firm, if any, and business address of the attorney;
- (2) Whether the attorney became involved with the petition, directly or indirectly, at the instance of any party against whom the claim is asserted or of any party's insurance carrier;
- (3) Whether the attorney represents or is employed by any other party or any insurance carrier involved in the matter;

- (4) Whether the attorney has received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, and, if so, the amounts and the identity of the person who paid the fees or other compensation;
- (5) If the attorney has not received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, whether the attorney expects to receive any fees or other compensation for these services, and, if so, the amounts and the identity of the person who is expected to pay the fees or other compensation; and
- (6) The terms of any agreement between the petitioner and the attorney.

Rule 7.951 adopted effective January 1, 2002.

Rule 7.952. Attendance at hearing on the petition to compromise a claim

(a) Attendance of the petitioner and claimant

The person compromising the claim on behalf of the minor or person with a disability and the minor or person with a disability must attend the hearing on the compromise of the claim unless the court for good cause dispenses with their personal appearance.

(Subd (a) amended effective January 1, 2007.)

(b) Attendance of the physician and other witnesses

At the hearing, the court may require the presence and testimony of witnesses, including the attending or examining physician.

Rule 7.952 amended effective January 1, 2007; adopted effective January 1, 2002.

Rule 7.953. Order for the deposit of funds of a minor or a person with a disability

(a) Acknowledgment of receipt by financial institution

In any case in which the court orders that funds to be received by a minor or a person with a disability must be deposited in a financial institution and not disbursed without further order of the court, the order must include a provision that a certified or filed endorsed copy of the order must be delivered to a manager at the financial institution where the funds are to be deposited, and that a receipt from the financial institution must be promptly filed with the court, acknowledging receipt of both the funds deposited and the order for deposit of funds.

(Subd (a) amended effective January 1, 2007.)

(b) Order permitting the withdrawal of funds by a former minor

If, in the order approving the compromise of a minor's claim, there is a finding that the minor will attain the age of majority on a definite date, the order for deposit may require that the depository permit the withdrawal of funds by the former minor after that date, without further order of the court.

Rule 7.953 amended effective January 1, 2007; adopted effective January 1, 2002.

Rule 7.954. Petition for the withdrawal of funds deposited for a minor or a person with a disability

(a) Verified petition required

A petition for the withdrawal of funds deposited for a minor or a person with a disability must be verified and must include the identity of the depository, a showing of the amounts previously withdrawn, a statement of the balance on deposit at the time of the filing of the petition, and a justification for the withdrawal.

(Subd (a) amended effective January 1, 2007.)

(b) Ex parte or noticed hearing

A petition for the withdrawal of funds may be considered ex parte or set for a hearing at the discretion of the court.

Rule 7.954 amended effective January 1, 2007; adopted effective January 1, 2002.

Rule 7.955. Attorney's fees for services to a minor or a person with a disability

(a) Reasonable attorney's fees

- (1) In all cases under Code of Civil Procedure section 372 or Probate Code sections 3600–3601, unless the court has approved the fee agreement in advance, the court must use a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability.
- (2) The court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor or person with a disability and must evaluate the agreement based on the facts and circumstances existing at the time the agreement was made, except where the attorney and the representative of the minor or person with a disability contemplated that the attorney's fee would be affected by later events.

(Subd (a) amended and lettered effective January 1, 2010; adopted as unlettered subd.)

(b) Factors the court may consider in determining a reasonable attorney's fee

In determining a reasonable attorney's fee, the court may consider the following nonexclusive factors:

- (1) The fact that a minor or person with a disability is involved and the circumstances of that minor or person with a disability.
- (2) The amount of the fee in proportion to the value of the services performed.
- (3) The novelty and difficulty of the questions involved and the skill required to perform the legal services properly.
- (4) The amount involved and the results obtained.
- (5) The time limitations or constraints imposed by the representative of the minor or person with a disability or by the circumstances.
- (6) The nature and length of the professional relationship between the attorney and the representative of the minor or person with a disability.
- (7) The experience, reputation, and ability of the attorney or attorneys performing the legal services.
- (8) The time and labor required.
- (9) The informed consent of the representative of the minor or person with a disability to the fee.
- (10) The relative sophistication of the attorney and the representative of the minor or person with a disability.
- (11) The likelihood, if apparent to the representative of the minor or person with a disability when the representation agreement was made, that the attorney's acceptance of the particular employment would preclude other employment.
- (12) Whether the fee is fixed, hourly, or contingent.
- (13) If the fee is contingent:
 - (A) The risk of loss borne by the attorney;
 - (B) The amount of costs advanced by the attorney; and

(C) The delay in payment of fees and reimbursement of costs paid by the attorney.

(14) Statutory requirements for representation agreements applicable to particular cases or claims.

(Subd (b) adopted effective January 1, 2010.)

(c) Attorney's declaration

A petition requesting court approval and allowance of an attorney's fee under (a) must include a declaration from the attorney that addresses the factors listed in (b) that are applicable to the matter before the court.

(Subd (c) adopted effective January 1, 2010.)

(d) Preemption

The Judicial Council has preempted all local rules relating to the determination of reasonable attorney's fees to be awarded from the proceeds of a compromise, settlement, or judgment under Probate Code sections 3600–3601. No trial court, or any division or branch of a trial court, may enact or enforce any local rule concerning this field, except a rule pertaining to the assignment or scheduling of a hearing on a petition or application for court approval or allowance of attorney's fees under sections 3600–3601. All local rules concerning this field are null and void unless otherwise permitted by a statute or a rule in the California Rules of Court.

(Subd (d) adopted effective January 1, 2010.)

Rule 7.955 amended effective January 1, 2010; adopted effective January 1, 2003; previously amended effective January 1, 2007.

Advisory Committee Comment

This rule requires the court to approve and allow attorney's fees in an amount that is reasonable under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of existing law concerning attorney's fees under a contingency fee agreement when the fees must be approved by the court. The facts and circumstances that the court may consider are discussed in a large body of decisional law under section 3601 and under other statutes that require the court to determine reasonable attorney's fees. The factors listed in rule 7.955(b) are modeled after those provided in rule 4-200 of the Rules of Professional Conduct of the State Bar of California concerning an unconscionable attorney's fee, but the advisory committee does not intend to suggest or imply that an attorney's fee must be found to be unconscionable under rule 4-200 to be determined to be unreasonable under this rule.

The rule permits, but does not require, the court to allow attorney's fees in an amount specified in a contingency fee agreement. The amount of attorney's fees allowed by the court must meet the reasonableness standard of section 3601 no matter how they are determined.

Chapter 21. Guardianships

Rule 7.1001. Guardian screening form

Rule 7.1002. Acknowledgment of receipt of Duties of Guardian

Rule 7.1003. Confidential guardianship status report form

Rule 7.1004. Termination of guardianship

Rule 7.1005. Service of copy of final account or report after resignation or removal of guardian

Rule 7.1006. Service of copy of final account on termination of guardianship

Rule 7.1007. Settlement of accounts and release by former minor

Rule 7.1008. Visitation by former guardian after termination of guardianship

Rule 7.1009. Standards of conduct for the guardian of the estate

Rule 7.1011. Taking possession of an asset of the ward at an institution or opening or changing ownership of an account or safe-deposit box in a financial institution

Rule 7.1012. The good cause exception to notice of the hearing on a petition for appointment of a temporary guardian

Rule 7.1013. Change of ward's residence

Rule 7.1014. Communications between courts in different California counties concerning guardianship venue

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)

Rule 7.1016. Participation and testimony of wards in guardianship proceedings

Rule 7.1001. Guardian screening form

(a) Screening form to be submitted with petition

Each proposed probate guardian, except a public guardian, or a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of guardian a completed *Confidential Guardian Screening Form* (form GC-212).

(Subd (a) amended effective January 1, 2002.)

(b) Use of form

The information on the *Confidential Guardian Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed guardian should be appointed.

(Subd (b) amended effective January 1, 2002.)

(c) Form to be confidential

The *Confidential Guardian Screening Form* and the information contained on the form are confidential. The clerk must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2002.)

Rule 7.1001 amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2002.

Rule 7.1002. Acknowledgment of receipt of Duties of Guardian

Before the court issues letters, each guardian must execute and file an acknowledgment of receipt of the *Duties of Guardian* (form GC-248).

Rule 7.1002 amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2002.

Rule 7.1003. Confidential guardianship status report form

(a) Due date of status report

Each guardian required by the court to complete, sign, and file the status report authorized by Probate Code section 1513.2 must file the completed and signed report no later than one month after the anniversary of the date of the order appointing him or her as guardian. Co-guardians may sign and file their reports jointly.

(b) Court clerk's duties

The clerk of each court that requires guardians to file the status report authorized by Probate Code section 1513.2 must:

- (1) Determine the annual due date for the completed report from each appointed guardian required to file the report;
- (2) Fill in the due date for the completed report, in the space provided in the form for that purpose, on each blank copy of the form that must be mailed to appointed guardians under (3); and
- (3) Mail by first class mail to each appointed guardian no later than one month prior to the date the status report is due under (a) a blank copy of *Confidential Guardianship Status Report* (form GC-251) for each child under guardianship under the same case number.

(Subd (b) amended effective January 1, 2007.)

Rule 7.1003 amended effective January 1, 2007; adopted effective January 1, 2004.

Rule 7.1004. Termination of guardianship

(a) Operation of law or court order

A guardianship of the person or estate of a minor may terminate by operation of law or may be terminated by court order where the court determines that it would be in the ward's best interest to terminate the guardianship.

(b) Guardian of the person

Under Probate Code section 1600 a guardianship of the person terminates by operation of law, and the guardian of the person need not file a petition for its termination, when the ward attains majority, dies, is adopted, or is emancipated.

(c) Duty of guardian of estate on termination

A guardian of the estate whose administration is terminated by operation of law or court order must file and obtain the court's approval of a final account or report of the administration.

Rule 7.1004 adopted effective January 1, 2004.

Rule 7.1005. Service of copy of final account or report after resignation or removal of guardian

A resigned or removed guardian of the estate must serve a copy of the guardian's final account or report and the petition for its settlement, with the notice of hearing that must be served on the successor guardian of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1005 adopted effective January 1, 2004.

Rule 7.1006. Service of copy of final account on termination of guardianship

(a) Minor living

In addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a copy of the guardian's final account and petition for its settlement on the minor, unless the court dispenses with such service.

(b) Personal representative of deceased minor

If the minor is deceased, in addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the personal representative of the deceased minor's estate, unless the court dispenses with such service.

(c) Successors in interest to deceased minor

If the minor is deceased and no personal representative of the minor's estate has been appointed or qualified or if the personal representative of the minor's estate is also the guardian, on termination of the guardianship, in addition to the notices of hearing required under Probate Code section 1460(b), the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the persons entitled to succeed to the deceased minor's estate, unless the court dispenses with such service.

Rule 7.1006 adopted effective January 1, 2004.

Rule 7.1007. Settlement of accounts and release by former minor

(a) Release of guardian of estate by ward after majority

A ward who has attained majority may settle accounts with his or her guardian of the estate and may give a valid release to the guardian if the court determines, at the time of the hearing on the final account, or on the final report and petition for termination on waiver of account, that the release has been obtained fairly and without undue influence. The release is not effective to discharge the guardian until one year after the ward has attained majority.

(b) Appearance of ward

The court may require the personal appearance of the ward at the hearing on the final account or report of the guardian of the estate after termination of the guardianship.

Rule 7.1007 adopted effective January 1, 2004.

Rule 7.1008. Visitation by former guardian after termination of guardianship

(a) Visitation order at time of termination of guardianship

Subject to the provisions of Welfare and Institutions Code section 304, a guardian may request the court to order visitation with the child under guardianship at the time of termination of the guardianship either in the guardian's petition for termination or in the guardian's objections or other pleading filed in response to the petition of another party for termination. The court may then order visitation if it is in the best interest of the child.

(b) Request for visitation after termination of guardianship

If no order was entered under (a) concerning visitation between the former guardian and the former ward at termination of the guardianship and no dependency proceedings for the child are pending, the former guardian may request the court to order visitation with the former ward after termination of the guardianship as provided in Family Code section 3105, Probate Code section 1602, rule 5.475, and this rule, as follows:

- (1) If either parent of the former ward is living, in an independent action for visitation under the Family Code; or
- (2) If neither parent of the former ward is living, in a guardianship proceeding under the Probate Code, including a proceeding commenced for that purpose.

(c) Declaration under UCCJEA

A guardian or former guardian requesting visitation under this rule must file a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) with his or her request for visitation.

(Subd (c) amended effective January 1, 2007.)

(d) Transmission of visitation order

Following the termination of the guardianship the clerk of the superior court issuing the visitation order concerning the guardian or former guardian and the ward or former ward must promptly transmit an endorsed filed copy of the order to the superior court of the county where a custody proceeding under the Family Code is pending or, if none, to the superior court of the county in which the custodial parent resides. An order transmitted to the court in the county where the custodial parent resides may be sent to the receiving court's Court Operations Manager, Family Division, or similar senior manager or clerk responsible for the operations of the family law departments of the court. If the receiving court has more than one location, the order may be sent to the main or central district of the court.

Rule 7.1008 amended effective January 1, 2007; adopted effective January 1, 2006.

Rule 7.1009. Standards of conduct for the guardian of the estate

Except as otherwise required by statute, in the exercise of ordinary care and diligence in managing and controlling the estates of the ward, the guardian of the estate is to be guided by the following principles:

(a) Avoidance of actual and apparent conflicts of interest with the ward

The guardian must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the ward, the appearance of conflicts of interest. The guardian must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the ward. In particular:

- (1) Except as appropriate for guardians who are not professional fiduciaries with full disclosure to the court, the guardian should not personally provide medical or legal services to the ward;
- (2) The guardian must be independent from all service providers, except when (a) no other guardian or service providers are reasonably available, (b) the exception is in the best interest of the ward, (c) the circumstances are fully disclosed to the court, and (d) prior court approval has been obtained;
- (3) The guardian must neither solicit nor accept incentives from service providers; and
- (4) The guardian must not engage his or her family members to provide services to the ward for a profit or fee when other alternatives are reasonably available. Where family members do provide such services, their relationship to the guardian must be fully disclosed to the court, the terms of engagement must be in the best interest of the ward compared to the terms available from independent service providers, the services must be competently performed, and the guardian must be able to exercise appropriate control and supervision.

A guardian's employees, including family members, are not service providers and are not providing services to the ward for a profit or fee within the meaning of this rule if their compensation is paid by the guardian and their services are either included in the guardian's petition for allowance of the guardian's compensation or are not paid from the ward's estate.

(b) Guardianship estate management

In addition to complying with applicable standards of estate management specified in rule 7.1059(b), the guardian of the estate must:

- (1) Manage the estate primarily for the ward's long-term benefit if the ward has a parent available who can provide sufficient support;
- (2) If it would be in the best interest of the ward and the estate, consider requesting court authority to support the ward from the estate if the ward does not have a parent available who can provide sufficient support.

Rule 7.1009 adopted effective January 1, 2008.

Advisory Committee Comment

The Probate and Mental Health Advisory Committee consulted with several organizations in the development of rule 7.1009, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. In developing this rule, the Probate and Mental Health Advisory Committee considered the National Guardianship Association's Standards of Practice. Some of these standards have been incorporated into the rule.

Rule 7.1011. Taking possession of an asset of the ward at an institution or opening or changing ownership of an account or safe-deposit box in a financial institution

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

- (1) An "institution" is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a guardianship that is not a "financial institution" within the meaning of this rule;
- (2) A "financial institution" is a bank, trust (except as provided in (d)), savings and loan association, savings bank, industrial bank, or credit union; and
- (3) "Taking possession" or "taking control" of an asset held or controlled by an institution includes changing title to the asset, withdrawing all or any portion of the asset, or transferring all or any portion of the asset from the institution.

(b) Responsibilities of the guardian when taking possession or control of an asset of the ward at an institution

When taking possession or control of an asset held by an institution in the name of the ward, the temporary or general guardian of the estate must provide the following to the institution:

- (1) A certified copy of the guardian's *Letters of Temporary Guardianship or Conservatorship* (form GC-150) or *Letters of Guardianship* (form GC-250) containing the Notice to Institutions and Financial Institutions on the second page; and
- (2) A blank copy of a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050).

(c) Responsibilities of the guardian when opening or changing the name on an account or a safe-deposit box in a financial institution

When opening or changing the name on an account or a safe-deposit box in a financial institution, the temporary or general guardian of the estate must provide the following to the financial institution:

- (1) A certified copy of the guardian's *Letters of Temporary Guardianship or Conservatorship* (form GC-150) or *Letters of Guardianship* (form GC-250) containing the Notice to Institutions and Financial Institutions on the second page; and
- (2) A blank copy of a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051).

(d) Application of this rule to trust arrangements

This rule applies to Totten trust accounts but does not apply to any other trust arrangement described in Probate Code section 82(b).

Rule 7.1011 adopted effective January 1, 2009.

Rule 7.1012. The good cause exception to notice of the hearing on a petition for appointment of a temporary guardian

(a) Purpose

The purpose of this rule is to establish uniform standards for the good cause exception to the notice of the hearing required on a petition for appointment of a temporary guardian under Probate Code section 2250(e).

(Subd (a) amended effective January 1, 2009.)

(b) Good cause for exceptions to notice limited

Good cause for an exception to the notice required by section 2250(e) must be based on a showing that the exception is necessary to protect the proposed ward or his or her estate from immediate and substantial harm.

(Subd (b) amended effective January 1, 2009.)

(c) Court may waive or change the time or manner of giving notice

An exception to the notice requirement of section 2250(e) may include one or any combination of the following:

- (1) Waiving notice to one, more than one, or all persons entitled to notice;
- (2) Requiring a different period of notice; and
- (3) Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or a combination of these methods, instead of notice by personal delivery to the proposed ward's parents or to a person with a visitation order.

(Subd (c) amended effective January 1, 2009.)

(d) Good cause exceptions to notice

Good cause for an exception to the notice requirement of section 2250(e) may include a showing of:

- (1) Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the ward or the ward's estate that could occur during the notice period.
- (2) Harm that one or more persons entitled to notice might do to the proposed ward, including abduction; or harm to the proposed ward's estate if notice to those persons is given. Such a showing would not support an exception to the requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.
- (3) The death or incapacity of the proposed ward's custodial parent and the petitioner's status as the custodial parent's nominee.
- (4) Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary guardian is appointed and (2) cannot be deferred for the notice period because of the proposed ward's pain or extreme discomfort or a significant risk of harm.
- (5) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed ward's estate or loss of support for the proposed ward during the notice period.

(Subd (d) amended effective January 1, 2009.)

(e) Contents of request for good cause exception to notice

- (1) When the temporary guardianship petition is prepared on the *Petition for Appointment of Temporary Guardian* (form GC-110), a request for a good cause exception to the notice requirement of section 2250(e) must be in

writing, separate from the petition for appointment of a temporary guardian, and must include:

- (A) An application containing the case caption and stating the relief requested;
 - (B) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;
 - (C) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b); and
 - (D) A proposed order.
- (2) When the temporary guardianship petition is prepared on the *Petition for Appointment of Temporary Guardian of the Person* (form GC-110(P)), a request for a good cause exception to the notice requirement of section 2250(e) may be included in the petition.

(Subd (e) amended effective January 1, 2009.)

Rule 7.1012 amended effective January 1, 2009; adopted effective January 1, 2008.

Rule 7.1013. Change of ward's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed below at least 15 days before the date of the proposed change, and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

- (1) The ward if he or she is 12 years of age or older;
- (2) The attorney of record for the ward;
- (3) The ward's parents;
- (4) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;
- (5) A guardian of the ward's estate; and

- (6) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding.

(b) Ward's personal residence

The "ward's personal residence" under (a) is the ward's residence when the first petition for appointment of a guardian was filed in the proceeding.

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

- (1) The ward's attorney of record;
- (2) The ward's parents;
- (3) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;
- (4) A guardian of the ward's estate; and
- (5) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding.

(d) Ward's residence

The "ward's residence" under (c) is the ward's residence at any time after appointment of a guardian.

(e) Use of Judicial Council forms GC-079 and GC-080

- (1) The *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079) must be used for the pre-move notice required under (a) and Probate Code section 2352(e)(3). The guardian, the guardian's attorney, or an employee of the attorney may complete the mailing and sign the proof of mailing on page 2 of the form. If the notice is mailed less than 15 days before the date of the move because an emergency requires a shorter period of notice, the basis for the emergency must be stated in the notice.

- (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward* (form GC-080) must be used for the post-move notice required under (c) and Probate Code section 2352(e)(1) and (2). The guardian, the guardian's attorney, or an employee of the attorney may complete the mailing and sign the proof of mailing on page 2 of the form.

(f) Prior court approval required to establish ward's residence outside California

Notwithstanding any other provision of this rule, prior court approval is required before a ward's residence may be established outside the state of California.

Rule 7.1013 adopted effective January 1, 2008.

Rule 7.1014. Communications between courts in different California counties concerning guardianship venue

(a) Purpose of rule

This rule addresses the communications between courts concerning guardianship venue required by Probate Code section 2204(b). These communications are between the superior court in one California county where a guardianship proceeding has been filed (referred to in this rule as the guardianship court) and one or more superior courts in one or more other California counties where custody or visitation proceedings under the Family Code involving the ward or proposed ward were previously filed (referred to in this rule as the family court or courts, or the other court or courts).

(b) Substantive communications between judicial officers

Before making a venue decision on a petition for appointment of a general guardian in a guardianship proceeding described in (a), or a decision on a petition to transfer under Probate Code section 2212 filed in the proceeding before the appointment of a guardian or temporary guardian, the judicial officer responsible for the proceeding in the guardianship court must communicate with the judicial officer or officers responsible for the custody proceeding or proceedings in the family court or courts concerning which county provides the venue for the guardianship proceeding that is in the best interests of the ward or the proposed ward.

- (1) If the currently responsible judicial officer in the family court or courts cannot be identified, communication must be made with the managing or supervising judicial officer of the family departments of the other court or courts, if any, or his or her designee, or with the presiding judge of the other court or courts or his or her designee.
- (2) If courts in more than two counties are involved, simultaneous communications among judicial officers of all of the courts are recommended, if reasonably practicable. If communications occur between

some but not all involved courts, the record of these communications must be made available to those judicial officers of the courts who were not included at or before the time the judicial officer of the guardianship court communicates with them.

- (3) A record must be made of all communications between judicial officers under this subdivision.
- (4) The parties to the guardianship proceeding, including a petitioner for transfer; all persons entitled to notice of the hearing on the petition for appointment of a guardian; and any additional persons ordered by the guardianship court must promptly be informed of the communications and given access to the record of the communications.
- (5) The provisions of Family Code section 3410(b) apply to communications between judicial officers under this subdivision, except that the term “jurisdiction” in that section corresponds to “venue” in this context, and the term “parties” in that section identifies the persons listed in (4).

(c) Preliminary communications

To assist the judicial officer in making the communication required in (b), the guardianship court may have preliminary communications with each family court to collect information about the proceeding in that court or for other routine matters, including calendar management, and scheduling.

- (1) The guardianship court should attempt to collect, and each family court is encouraged to provide, as much of the following information about the proceeding in the family court as is reasonable under the circumstances:
 - (A) The case number or numbers and the nature of each family court proceeding;
 - (B) The names of the parties to each family court proceeding, including contact information for self-represented parties; their relationship or other connection to the ward or proposed ward in the guardianship proceeding, and the names and contact information of counsel for any parties represented by counsel;
 - (C) The current status (active or inactive) of each family court proceeding, whether any future hearings are set in each proceeding, and if so, their dates and times, locations, and nature;
 - (D) The contents and dates filed of orders in the each family court proceeding that decide or resolve custody or visitation issues concerning the ward or proposed ward in the guardianship proceeding;

- (E) Whether any orders of each family court are final, were appealed from, or were the subject of extraordinary writ proceedings, and the current status of any such appeal or proceeding;
 - (F) The court branch and department where each family court proceeding was assigned and where the proceeding is currently assigned or pending;
 - (G) The identity of the judicial officer currently assigned to or otherwise responsible for each family court proceeding; and
 - (H) Other information about each family court proceeding requested by the judicial officer of the guardianship court.
- (2) In the discretion of the judicial officer of the guardianship court, preliminary communications under this rule may be between judicial officers of the courts involved or between staff of the guardianship court and judicial officers or court staff of each other court.
 - (3) Family Code section 3410(c) applies to preliminary communications under this rule.
- (d) Applicability of this rule to petitions to transfer filed after the appointment of a guardian or temporary guardian**

Subdivisions (b) and (c) of this rule may, in the discretion of the guardianship court, apply to petitions for transfer described in Probate Code section 2204(b)(2).

(e) “Record” under this rule

“Record” under this rule has the meaning provided in Family Code section 3410(e).

Rule 7.1014 adopted effective January 1, 2013.

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)

(a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

- (1) “Act” means the Indian Child Welfare Act (25 United States Code sections 1901–1963).

- (2) “Petitioner” means and refers to a petitioner for the appointment of a guardian of the person of a child or a petitioner for the appointment of a conservator of the person of a formerly married minor child.

(b) Applicability of this rule and rules 5.480 through 5.487

- (1) This rule applies to the following proceedings under division 4 of the Probate Code when the proposed ward or conservatee is an Indian child, within the meaning of the act:
 - (A) A guardianship of the person or the person and estate in which the proposed guardian of the person is not the proposed ward’s natural parent or Indian custodian within the meaning of the act;
 - (B) A conservatorship of the person or the person and estate of a formerly married minor in which the proposed conservator is not a natural parent or Indian custodian of the minor and is seeking physical custody of the proposed conservatee.
- (2) Unless the context otherwise requires, rules 5.480 through 5.487 apply to the proceedings listed in (1).
- (3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.487 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of the person of an Indian child and to an Indian child’s appointed temporary or general guardian or conservator of the person.
- (4) If the court appoints a temporary or general guardian or conservator of the person of the child involved in a proceeding listed in (1), the duties and responsibilities of a petitioner under this rule are transferred to and become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner has concerning the child to the appointed guardian or conservator.

(c) Notice

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and Institutions Code section 224.3(b), that an Indian child is involved, the petitioner and the court must notify the child’s parents or legal guardian and Indian custodian, and the Indian child’s tribe, of the pending proceeding and the right of the tribe to intervene, as follows:

- (1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.
- (2) The petitioner and his or her attorney, if any, must complete the *Notice* and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.
- (3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) in the manner described in (1) and sign the declaration of mailing on the *Notice*.
- (4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve the *Notice* in the manner described in (1) and sign the certificate of mailing on the *Notice*.
- (5) The original of all *Notices of Child Custody Proceeding for Indian Child* (form ICWA-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.
- (6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.
- (7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the *Notice*, the additional tribes or bands may be listed on an *Attachment to Notice of Child Custody Proceeding for Indian Child* (form ICWA-030(A)).
- (8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first hearing unless and until it is determined that the act does not apply to the proceeding.
- (9) If, after a reasonable time following the service of notice under the act—but in no event less than 60 days—no determinative response to the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is received,

the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.

- (10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer required and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.
- (11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.

(d) Duty of inquiry

- (1) The court, a court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, a petitioner, and an appointed temporary or general guardian or conservator of the person of a minor child each have an affirmative and continuing duty to inquire whether the child involved in the matters identified in (b)(1) is or may be an Indian child.
- (2) Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents, any other legal guardian, and any Indian custodian, whether the child is or may be an Indian child, and must complete items 1c and 8 of the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) and attach it to his or her petition.
- (3) At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.
- (4) If the parent, Indian custodian, or guardian does not personally appear at a hearing in a proceeding identified in (b)(1), the court may order the petitioner to use reasonable diligence to find and ask the parent, Indian custodian, or legal guardian to complete and deliver to petitioner a *Parental Notification of Indian Status* (form ICWA-020).
- (5) If the court or county investigator, petitioner, appointed guardian or conservator, or the attorney for a petitioner or appointed guardian or conservator, knows or has reason to know that an Indian child is involved in

the proceeding, he or she must make further inquiry as soon as practicable by:

- (A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 United States Code section 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);
 - (B) Contacting the U.S. Department of the Interior, Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and
 - (C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child’s tribal membership status or eligibility for membership.
- (6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.
- (7) The circumstances that may provide reason to know the child is an Indian child include the following:
- (A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child’s extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);
 - (B) The residence or domicile of the child, the child’s parents, or an Indian custodian is in a predominantly Indian community; or
 - (C) The child or the child’s family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

(Subd (d) amended effective July 1, 2012.)

Rule 7.1015 amended effective July 1, 2012; adopted effective January 1, 2008.

Rule 7.1016. Participation and testimony of wards in guardianship proceedings

(a) Definitions

As used in this rule, the following terms have the meanings specified:

- (1) “Ward” includes “proposed ward.”
- (2) A “proceeding” is a matter before the court for decision in a probate guardianship of the person that concerns appointment or removal of a guardian, visitation, determination of the ward’s place of residence, or termination of the guardianship by court order.
- (3) “Party,” as used in this rule to refer to the ward, means a ward who has filed a petition or opposition to a petition concerning a proceeding or other matter subject to this rule.

(b) Purpose and scope of rule

- (1) This rule applies Family Code section 3042 to the participation and testimony of the ward in a proceeding in a probate guardianship of the person. The testimony of other minors in a guardianship case is governed by Evidence Code sections 765(b) and 767(b).
- (2) The court in its discretion may apply this rule, in whole or in part, to the participation and testimony of a ward in a guardianship of the estate or in a matter before the court in a guardianship of the person that is not a proceeding within the meaning of this rule. The phrase “or other matter subject to this rule” following the term “proceeding” is a reference to the matters described in this paragraph.
- (3) No statutory mandate, rule, or practice requires a ward who is not a party to the proceeding or other matter subject to this rule to participate in court or prohibits him or her from doing so. When a ward desires to participate but is not a party to the proceeding or other matter subject to this rule, the court must balance the protection of the ward, the statutory duty to consider the wishes of and input from the ward, and the probative value of the ward’s input while ensuring all parties’ due process rights to challenge evidence relied on by the court in making decisions affecting the ward in matters covered by the rule.
- (4) This rule rather than rule 5.250, on children’s participation and testimony in family court proceedings, applies in probate guardianship proceedings.

(c) Determining whether the nonparty ward wishes to address the court

- (1) The following persons must inform the court if they have information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule:
 - (A) The ward's counsel;
 - (B) A court or county guardianship investigator;
 - (C) A child custody recommending counselor who provides recommendations to the judicial officer under Family Code section 3183;
 - (D) An expert appointed by the court under Evidence Code section 730 to assist the court in the matter; or
 - (E) The ward's guardian ad litem.
 - (2) The following persons may inform the court if they have information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule:
 - (A) A party in the guardianship case; and
 - (B) An attorney for a party in the guardianship case.
 - (3) In the absence of information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule, the judicial officer may inquire whether the ward wishes to do so.
- (d) Guidelines for determining whether addressing the court is in the nonparty ward's best interest**
- (1) When a ward who is not a party indicates that he or she wishes to address the court, the judicial officer must consider whether involving the ward in the proceeding or other matter subject to this rule is in the ward's best interest.
 - (2) If the ward is 12 years old or older, the judicial officer must hear from the ward unless the court makes a finding that addressing the court is not in the ward's best interest and states the reasons on the record.
 - (3) In determining whether addressing the court is in the ward's best interest, the judicial officer should consider the following:
 - (A) Whether the ward is of sufficient age and capacity to form an intelligent preference as to the matter to be decided;

- (B) Whether the ward is of sufficient age and capacity to understand the nature of testimony;
- (C) Whether information has been presented indicating that the ward may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the ward may benefit from addressing the court;
- (D) Whether the subject areas about which the ward is anticipated to address the court are relevant to the decision the court must make;
- (E) Whether the appointment of counsel under Probate Code section 1470 or a guardian ad litem for the ward would be helpful to the determination or would be necessary to protect the ward's interests; and
- (F) Whether any other factors weigh in favor of or against having the ward address the court, taking into consideration the ward's desire to do so.

(e) Guidelines for receiving testimony and other input from the nonparty ward

- (1) No testimony of a ward may be received without such testimony being heard on the record or in the presence of the parties. This requirement may not be waived.
- (2) On deciding to take the testimony of a ward who is not a party in a proceeding or other matter subject to this rule, the judicial officer should balance the necessity of taking the ward's testimony in the courtroom with parents, the guardian or proposed guardian, other parties, and attorneys present with the need to create an environment in which the ward can be open and honest. In each case in which a ward's testimony will be taken, the judicial officer should consider:
 - (A) Where the testimony will be taken;
 - (B) Who should be present when the testimony is taken;
 - (C) How the ward will be questioned; and
 - (D) Whether a court reporter is available in all instances, but especially when the ward's testimony may be taken outside the presence of the parties and their attorneys. If the court reporter will not be available, whether there are other means to collect, preserve, transcribe, and make the ward's testimony available to parties and their attorneys.
- (3) In taking testimony from a ward who is not a party to the proceeding or other matter subject to this rule, the court must take the special care required by

Evidence Code section 765(b). If the ward is not represented by an attorney, the court must inform the ward in an age-appropriate manner about the limitations on confidentiality of testimony and that the information provided to the court will be on the record and provided to the parties in the case.

- (4) In the process of listening to and inviting the ward's input, the court must allow but not require the ward to state a preference regarding the matter to be decided in the proceeding or other matter subject to this rule and should provide information in an age-appropriate manner about the process by which the court will make a decision.
- (5) In any case in which a ward who is not a party to the proceeding or other matter subject to this rule will be called to testify, the court must consider the appointment of counsel for the ward under Probate Code section 1470 and may consider the appointment of a guardian ad litem for the ward. In addition to satisfying the requirements for minor's counsel under rule 7.1101, minor's counsel must:
 - (A) Provide information to the ward in an age-appropriate manner about the limitations on the confidentiality of testimony and indicate to the ward the possibility that information provided to the court will be on the record and provided to the parties in the case;
 - (B) Allow but not require the ward to state a preference regarding the issues to be decided in the proceeding or other matter subject to this rule, and provide information in an age-appropriate manner about the process by which the court will make a decision;
 - (C) If appropriate, provide the ward with an orientation to the courtroom or other place where the ward will testify; and
 - (D) Inform the parties and the court about the ward's desire to provide input.
- (6) If the court precludes the calling of a ward who is not a party as a witness in a proceeding or other matter subject to this rule, alternatives for the court to obtain information or other input from the ward may include:
 - (A) A court or county guardianship investigator participating in the case under Probate Code section 1513 or 1513.2;
 - (B) Appointment of a child custody evaluator or investigator under Evidence Code section 730;
 - (C) Appointment of counsel or a guardian ad litem for the ward;

- (D) Admissible evidence provided by the ward's parents, parties, or witnesses in the proceeding or other matter subject to this rule;
 - (E) Information provided by a child custody recommending counselor authorized under Family Code section 3183 to make a recommendation to the court; and
 - (F) Information provided from a child interview center or professional to avoid unnecessary multiple interviews.
- (7) If the court precludes the calling of a ward who is not a party as a witness in a proceeding or other matter subject to this rule and specifies one of the other alternatives, the court must require that the information or evidence obtained by alternative means and provided by a professional (other than counsel for the ward or counsel for any party) or a nonparty:
- (A) Be in writing and fully document the ward's views on the matters on which he or she wished to express an opinion;
 - (B) Describe the ward's input in sufficient detail to assist the court in making its decision;
 - (C) Be provided to the court and to the parties by a person who will be available for testimony and cross-examination; and
 - (D) Be filed in the confidential portion of the case file.

(f) Responsibilities of court-connected or appointed professionals—all wards

A child custody evaluator, an expert witness appointed under Evidence Code section 730, an investigator, a child custody recommending counselor or other custody mediator appointed or assigned to meet with a ward must:

- (1) Provide information to the ward in an age-appropriate manner about the limitations on confidentiality of testimony and the possibility that information provided to the professional may be shared with the court on the record and provided to the parties in the case;
- (2) Allow but not require the ward to state a preference regarding the issues to be decided in the proceeding or other matter subject to this rule, and provide information in an age-appropriate manner about the process by which the court will make a decision; and
- (3) Provide to the other parties in the case information about how best to support the interest of the ward during the court process.

(g) Methods of providing information to parties and supporting nonparty wards

Courts should provide information to the parties and the ward who is not a party to the proceeding or other matter subject to this rule when the ward wants to participate or testify. Methods of providing information may include:

- (1) Having court or county guardianship investigators and experts appointed under Evidence Code section 730 meet jointly or separately with the parties and their attorneys to discuss alternatives to having the ward provide direct testimony;
- (2) Providing an orientation for the ward about the court process and the role of the judicial officer in making decisions, how the courtroom or chambers will be set up, and what participating or testifying will entail;
- (3) Providing information to parties before the ward participates or testifies so that they can consider the possible effect on the ward of participating or not participating in the proceeding or other matter subject to this rule;
- (4) Appointing counsel under Probate Code section 1470 or a guardian ad litem for the ward to assist in the provision of information to the ward concerning his or her decision to participate in the proceeding or testify;
- (5) Including information in guardianship orientation presentations and publications about the options available to a ward who is not a party to the proceeding or other matter subject to this rule to participate or testify or not to do so, and the consequences of a ward's decision whether to become a party to the proceeding or other matter subject to this rule; and
- (6) Providing an interpreter for the ward.

(h) If the ward is a party to the proceeding

- (1) A ward who is a party to the proceeding or other matter subject to this rule is subject to the law of discovery applied to parties in civil actions and may be called as a witness by any other party unless the court makes a finding that providing information in response to discovery requests or testifying as a witness is not in the ward's best interest and states the reasons on the record.
- (2) The court must consider appointing counsel under Probate Code section 1470 or a guardian ad litem for a ward who is a party to the proceeding or other matter subject to this rule if the ward is not represented by counsel.
- (3) In determining whether providing information in response to discovery requests or testifying as a witness is in the ward's best interest, the judicial officer should consider the following:

- (A) Whether information has been presented indicating that the ward may be at risk emotionally if he or she is permitted or denied the opportunity to provide information in response to discovery requests or by testimony;
 - (B) Whether the subject areas about which the ward is anticipated to provide information in response to discovery requests or by testimony are relevant to the decision the court must make; and
 - (C) Whether any other factors weigh in favor of or against having the ward provide information in response to discovery requests or by testimony.
- (4) In taking testimony from a ward who is a party to the proceeding or other matter subject to this rule, the court must take the special care required by Evidence Code section 765(b). If the ward is not represented by an attorney, the court must inform the ward in an age-appropriate manner about the limitations on confidentiality of testimony and that the information provided to the court will be on the record and provided to the parties in the case.

(i) Education and training of judicial officers and court staff

Education and training content for court staff and judicial officers should include information on wards' participation in proceedings or other matters subject to this rule, methods other than direct testimony for receiving input from a ward, procedures for taking a ward's testimony, and differences in the application of this rule to wards who are and are not parties to the proceeding or other matters subject to this rule.

Rule 7.1016 adopted effective January 1, 2013.

Chapter 22. Conservatorships

Rule 7.1050. Conservator forms

Rule 7.1051. Acknowledgment of receipt of Duties of Conservator

Rule 7.1052. Termination of conservatorship

Rule 7.1053. Service of final account of removed or resigned conservator

Rule 7.1054. Service of final account after termination of conservatorship

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Rule 7.1062. The good cause exception to notice of the hearing on a petition for appointment of a temporary conservator

Rule 7.1063. Change of conservatee's residence

Rule 7.1050. Conservator forms

(a) Forms to be submitted with petition

Each petitioner, unless the petitioner is a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of conservator a completed *Confidential Supplemental Information* statement (form GC-312). In addition, each proposed conservator, except a bank or other entity entitled to conduct the business of a trust company, or a public guardian, must submit a completed *Confidential Conservator Screening Form* (form GC-314).

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2002.)

(b) Use of form

The information on the *Confidential Conservator Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed conservator should be appointed.

(Subd (b) amended effective January 1, 2002.)

(c) Forms to be confidential

The *Confidential Conservator Screening Form*, the *Confidential Supplemental Information* statement, and the information contained on these forms are confidential. The clerk must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2002.)

Rule 7.1050 amended effective January 1, 2007; adopted effective January 1, 2001; previously amended effective January 1, 2002.

Rule 7.1051. Acknowledgment of receipt of Duties of Conservator

Before the court issues letters, each conservator must execute and file an acknowledgment of receipt of the *Duties of Conservator and Acknowledgment of Receipt of Handbook* (form GC-348).

Rule 7.1051 amended effective January 1, 2002; adopted effective January 1, 2001.

Rule 7.1052. Termination of conservatorship

(a) Operation of law or court order

A conservatorship of the person or estate may terminate by operation of law or may be terminated by court order if the court determines that it is no longer required.

(b) Conservator of the person

Under Probate Code section 1860(a), a conservatorship of the person terminates by operation of law when the conservatee dies, and the conservator of the person need not file a petition for its termination.

(c) Duty of conservator of estate on termination

A conservator of the estate whose administration is terminated by operation of law or by court order must file and obtain the court's approval of a final account of the administration.

Rule 7.1052 adopted effective January 1, 2004.

Rule 7.1053. Service of final account of removed or resigned conservator

A resigned or removed conservator of the estate must serve a copy of the conservator's final account and the petition for its settlement with the notice of hearing that must be served on the successor conservator of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1053 adopted effective January 1, 2004.

Rule 7.1054. Service of final account after termination of conservatorship

After termination of the conservatorship, the conservator of the estate must serve copies of the conservator's final account and the petition for its settlement with the notices of hearing that must be served on the former conservatee and on the spouse or domestic partner of the former conservatee under Probate Code sections 1460(b)(2) and (3), unless the court dispenses with such service.

Rule 7.1054 adopted effective January 1, 2004.

Rule 7.1059. Standards of conduct for the conservator of the estate

Except as otherwise required by statute, in the exercise of ordinary care and diligence in managing and controlling the estate of the conservatee, the conservator of the estate is to be guided by the following principles:

(a) Avoidance of actual and apparent conflicts of interest with the conservatee

The conservator must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the conservatee, the appearance of conflicts of interest. The conservator must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the conservatee. In particular:

- (1) Except as appropriate for conservators who are not professional fiduciaries with full disclosure to the court, the conservator should not personally provide housing, medical, or legal services to the conservatee;
- (2) The conservator must be independent from all service providers, except when (a) no other conservator or service providers are reasonably available, (b) the exception is in the best interest of the conservatee, (c) the circumstances are fully disclosed to the court, and (d) prior court approval has been obtained;
- (3) The conservator must neither solicit nor accept incentives from service providers; and
- (4) The conservator must not engage his or her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available. Where family members do provide such services, their relationship to the conservator must be fully disclosed to the court, the terms of engagement must be in the best interest of the conservatee compared to the terms available from independent service providers, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.

A conservator's employees, including family members, are not service providers and are not providing services to the conservatee for a profit or fee within the meaning of this rule if their compensation is paid by the conservator and their services are either included in the conservator's petition for allowance of the conservator's compensation or are not paid from the conservatee's estate.

(b) Conservatorship estate management

The conservator of the estate must:

- (1) Provide competent management of the conservatee's property, with the care of a prudent person dealing with someone else's property;
- (2) Refrain from unreasonably risky investments;
- (3) Refrain from making loans or gifts of estate property, except as authorized by the court after full disclosure;

- (4) Manage the estate for the benefit of the conservatee;
- (5) Subject to the duty of full disclosure to the court and persons entitled under law to receive it, closely guard against unnecessary or inappropriate disclosure of the conservatee's financial information;
- (6) Keep the money and property of the estate separate from the conservator's or any other person's money or property, except as may be permitted under statutes authorizing public guardians or public conservators and certain regulated private fiduciaries to maintain common trust funds or similar common investments;
- (7) Hold title reflecting the conservatorship in individual securities, mutual funds, securities broker accounts, and accounts with financial institutions;
- (8) Keep accurate records of all transactions. Professional fiduciaries must maintain prudent accounting systems and procedures designed to protect against embezzlement and other cash-asset mismanagement;
- (9) Undertake as soon as possible after appointment and qualification to locate and safeguard the conservatee's estate planning documents, including wills, living trusts, powers of attorney for health care and finances, life insurance policies, and pension records;
- (10) Undertake as soon as possible after appointment and qualification to secure the real and personal property of the estate, insuring it at appropriate levels, and protecting it against damage, destruction, or loss;
- (11) Make reasonable efforts to preserve property identified in the conservatee's estate planning documents;
- (12) Communicate as necessary and appropriate with the conservator of the person of the conservatee, if any, and with the trustee of any trust of which the conservatee is a beneficiary;
- (13) Pursue claims against others on behalf of the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting prior court authority to pursue or compromise large or complex claims, particularly those that might require litigation and the assistance of counsel and those that might result in an award of attorneys' fees for the other party against the estate if unsuccessful, and request such approval before entering into a contingent fee agreement with counsel;
- (14) Defend against actions or claims against the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting

court approval or instructions concerning the defense or compromise of litigation against the estate;

- (15) Collect all public and insurance benefits for which the conservatee is eligible;
- (16) Evaluate the conservatee's ability to manage cash or other assets and take appropriate action, including obtaining prior court approval when necessary or appropriate, to enable the conservatee to do so to the level of his or her ability;
- (17) When disposing of the conservatee's tangible personal property, inform the conservatee's family members in advance and give them an opportunity to acquire the property, with approval or confirmation of the court; and
- (18) In deciding whether it is in the best interest of the conservatee to dispose of property of the estate, consider the following factors, among others, as appropriate in the circumstances:
 - (A) The likely benefit or improvement of the conservatee's life that disposing of the property would bring;
 - (B) The likelihood that the conservatee would need or benefit from the property in the future;
 - (C) Subject to the factors specified in Probate Code section 2113, the previously expressed or current desires of the conservatee concerning the property;
 - (D) The provisions of the conservatee's estate plan concerning the property;
 - (E) The tax consequences of the disposition transaction;
 - (F) The impact of the disposition transaction on the conservatee's entitlement to public benefits;
 - (G) The condition of the entire estate;
 - (H) Alternatives to disposition of the property;
 - (I) The likelihood that the property will deteriorate or be subject to waste if retained in the estate; and
 - (J) The benefit versus the cost or liability of maintaining the property in the estate.

Rule 7.1059 adopted effective January 1, 2008.

Advisory Committee Comment

The Probate and Mental Health Advisory Committee consulted with several organizations in the development of rule 7.1059, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. In developing this rule, the Probate and Mental Health Advisory Committee considered the National Guardianship Association's Standards of Practice. Some of these standards have been incorporated into the rules.

Rule 7.1060. Investigations and reports by court investigators

(a) *Order Appointing Court Investigator* (form GC-330)

Order Appointing Court Investigator (form GC-330) is an optional form within the meaning of rule 1.35 of these rules, except as follows:

- (1) A court may, by local rule, require that form GC-330 be used for orders appointing court investigators and directing them to conduct all or any of the investigations described in the form and to prepare, file, and serve copies of reports concerning those investigations. The local rule may also prescribe the form's preparation, service, and delivery to the court for execution and filing.
- (2) A court may, by local rule, require that a general order, a court-prepared order, or a local form order instead of form GC-330 be used to appoint and direct the actions of court investigators concerning all or any of the investigations and reports described in form GC-330.

(b) *Order Appointing Court Investigator (Review and Successor Conservator Investigations)* (form GC-331)

Order Appointing Court Investigator (Review and Successor Conservator Investigations) (form GC-331) is an optional form within the meaning of rule 1.35 of these rules, except as follows:

- (1) A court may, by local rule, require that form GC-331 be used for orders appointing court investigators and directing them to conduct all or any of the review investigations under Probate Code sections 1850 and 1851 or investigations concerning the appointment of successor conservators under Probate Code sections 2684 and 2686 described in the form and to prepare, file, and serve copies of reports concerning those investigations. Form GC-331 is to be prepared by the court only.
- (2) A court may, by local rule, require that a general order, a court-prepared order, or a local form order instead of form GC-331 be used to appoint and direct the actions of court investigators concerning all or any of the investigations and reports described in form GC-331.

(c) ***Order Setting Biennial Review Investigation and Directing Status Report Before Review (form GC-332)***

Order Setting Biennial Review Investigation and Directing Status Report Before Review (form GC-332) is an optional form within the meaning of rule 1.35 of these rules, except as follows:

- (1) A court may, by local rule, require that form GC-332 be used for orders setting biennial review investigations and directing status reports under Probate Code section 1850(a)(2). Form GC-332 is to be prepared by the court only.
- (2) A court may, by local rule, require that a general order, a court-prepared order, or a local form order instead of form GC-332 be used concerning the matters described in form GC-332.

Rule 7.1060 adopted effective January 1, 2011.

Rule 7.1061. Taking possession of an asset of the conservatee at an institution or opening or changing ownership of an account or safe-deposit box in a financial institution

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

- (1) An “institution” is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a guardianship that is not a “financial institution” within the meaning of this rule;
- (2) A “financial institution” is a bank, trust (except as provided in (d)), savings and loan association, savings bank, industrial bank, or credit union; and
- (3) “Taking possession” or “taking control” of an asset held or controlled by an institution includes changing title to the asset, withdrawing all or any portion of the asset, or transferring all or any portion of the asset from the institution.

(b) Responsibilities of the conservator when taking possession or control of an asset of the conservatee at an institution

When taking possession or control of an asset held by an institution in the name of the conservatee, the temporary, general, or limited conservator of the estate must provide the following to the institution:

- (1) A certified copy of the conservator's *Letters of Temporary Guardianship or Conservatorship* (form GC-150) or *Letters of Conservatorship* (form GC-350) containing the Notice to Institutions and Financial Institutions on the second page; and
 - (2) A blank copy of a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050).
- (c) **Responsibilities of the conservator when opening or changing the name on an account or a safe-deposit box at a financial institution**

When opening or changing the name on an account or a safe-deposit box in a financial institution, the temporary, general, or limited conservator of the estate must provide the following to the financial institution:

- (1) A certified copy of the guardian's *Letters of Temporary Guardianship or Conservatorship* (form GC-150) or *Letters of Conservatorship* (form GC-350) containing the Notice to Institutions and Financial Institutions on the second page; and
 - (2) A blank copy of a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051).
- (d) **Application of this rule to Totten trust accounts**

This rule applies to Totten trust accounts but does not apply to any other trust arrangement described in Probate Code section 82(b).

Rule 7.1061 adopted effective January 1, 2009.

Rule 7.1062. The good cause exception to notice of the hearing on a petition for appointment of a temporary conservator

(a) **Purpose**

The purpose of this rule is to establish uniform standards for the good cause exception to the notice of the hearing required on a petition for appointment of a temporary conservator under Probate Code section 2250(e).

(Subd (a) amended effective January 1, 2009.)

(b) **Good cause for exceptions to notice limited**

Good cause for an exception to the notice required by section 2250(e) must be based on a showing that the exception is necessary to protect the proposed conservatee or his or her estate from immediate and substantial harm.

(Subd (b) amended effective January 1, 2009.)

(c) Court may change the time or manner of giving notice

An exception to the notice requirement of section 2250(e) may include one or any combination of the following:

- (1) Waiving notice to one, more than one, or all persons entitled to notice;
- (2) Requiring a different period of notice; and
- (3) Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or personal delivery, or a combination of these methods, instead of or in addition to notice by mail to the proposed conservatee's spouse or registered domestic partner and relatives.

(Subd (c) amended effective July 1, 2008.)

(d) Good cause exceptions to notice

Good cause for an exception to the notice requirement of section 2250(e) may include a showing of:

- (1) Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the conservatee or the conservatee's estate that could occur during the notice period.
- (2) Harm that one or more persons entitled to notice might do to the proposed conservatee or the proposed conservatee's estate if notice is given. Such a showing would not support an exception to the requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.
- (3) Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary conservator is appointed and (2) cannot be deferred for the notice period because of the proposed conservatee's pain or extreme discomfort or a significant risk of harm.
- (4) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed conservatee's estate during the notice period.

(Subd (d) amended effective January 1, 2009.)

(e) Contents of request for good cause exception to notice

A request for a good cause exception to the notice requirement of section 2250(e) must be in writing, separate from the petition for appointment of a temporary conservator, and must include:

- (1) An application containing the case caption and stating the relief requested;
- (2) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;
- (3) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b); and
- (4) A proposed order.

(Subd (e) amended effective January 1, 2009.)

Rule 7.1062 amended effective January 1, 2009; adopted effective January 1, 2008; previously amended effective July 1, 2008.

Rule 7.1063. Change of conservatee's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the conservator of the person must mail copies of a notice of an intended change of the conservatee's personal residence to the persons listed below at least 15 days before the date of the proposed change, and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

- (1) The conservatee;
- (2) The conservatee's attorney of record;
- (3) The conservatee's spouse or registered domestic partner; and
- (4) The conservatee's relatives named in the *Petition for Appointment of Probate Conservator* (form GC-310), including the conservatee's "deemed relatives" under Probate Code section 1821(b)(1)–(4) if the conservatee has no spouse or registered domestic partner and no second-degree relatives.

(b) Conservatee's personal residence

- (1) The “conservatee’s personal residence” under (a) is the residence the conservatee understands or believes, or reasonably appears to understand or believe, to be his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, whether or not the conservatee is living in that residence on that date. A residential care facility, including a board and care, intermediate care, skilled nursing, or secured perimeter facility, may be the conservatee’s personal residence under this rule.
- (2) If the conservatee cannot form or communicate an understanding or belief concerning his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, his or her personal residence under this rule is the residence he or she last previously understood or believed, or appeared to understand or believe, to be his or her permanent residence.
- (3) For purposes of this rule, the following changes of residence are or are not changes of the conservatee’s personal residence, as indicated:
 - (A) A move from the conservatee’s personal residence under this rule to a residential care facility or other residence is a change of the conservatee’s personal residence under (a).
 - (B) A move from a residential care facility or other residence to another residence that is not the conservatee’s personal residence under this rule is a change of the conservatee’s personal residence under (a).
 - (C) A move from a residential care facility or other residence to the conservatee’s personal residence under this rule is not a change of the conservatee’s personal residence under (a).

(c) Post-move notice of a change of residence required

The conservator of the person must file a notice of a change of the conservatee’s residence with the court within 30 days of the date of the change. Unless waived by the court for good cause to prevent harm to the conservatee, the conservator must mail a copy of the notice to the persons named below and file a proof of mailing with the original notice filed with the court. Unless waived, the notice must be mailed to:

- (1) The conservatee’s attorney of record;
- (2) The conservatee’s spouse or registered domestic partner; and
- (3) The conservatee’s relatives named in the *Petition for Appointment of Probate Conservator* (form GC-310), including the conservatee’s “deemed relatives”

under Probate Code section 1821(b)(1)–(4) if the conservatee has no spouse or registered domestic partner and no second-degree relatives.

(d) Conservatee’s residence

The “conservatee’s residence” under (c) is the conservatee’s residence at any time after appointment of a conservator.

(e) Use of Judicial Council forms GC-079 and GC-080

- (1) The *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079) must be used for the pre-move notice required under (a) and Probate Code section 2352(e)(3). The conservator, the conservator’s attorney, or an employee of the attorney may complete the mailing and sign the Proof of Mailing on page 2 of the form. If the notice is mailed less than 15 days before the date of the move because an emergency requires a shorter period of notice, the basis for the emergency must be stated in the notice.
- (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward* (form GC-080) must be used for the post-move notice required under (c) and Probate Code section 2352(e)(1) and (2). The conservator, the conservator’s attorney, or an employee of the attorney may complete the mailing and sign the Proof of Mailing on page 2 of the form.

(f) Prior court approval required to establish conservatee’s residence outside California

Notwithstanding any other provision of this rule, prior court approval is required before a conservatee’s residence may be established outside the state of California.

Rule 7.1063 adopted effective January 1, 2008.

Chapter 23. Court-Appointed Counsel in Probate Proceedings

Chapter 23 adopted effective January 1, 2008.

Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

- (1) “Appointed counsel” or “counsel appointed by the court” are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders directly responsible for the performance of legal services under the court’s appointment of a county’s public defender.
- (2) A “probate guardianship” or “probate conservatorship” is a guardianship or conservatorship proceeding under division 4 of the Probate Code.
- (3) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.
- (4) An “LPS conservatorship” is a conservatorship proceeding for a gravely disabled person under chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.
- (5) A “contested matter” in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections are filed by any party or made by the conservatee or proposed conservatee orally in open court.
- (6) “AOC” is the Administrative Office of the Courts.
- (7) “Counsel in private practice” includes attorneys employed by or performing services under contracts with nonprofit organizations.

(Subd (a) amended effective January 1, 2009.)

(b) Qualifications of appointed counsel in private practice

Except as provided in this rule, each counsel in private practice appointed by the court on or after January 1, 2008, must be an active member of the State Bar of California for at least three years immediately before the date of appointment, with no discipline imposed within the 12 months immediately preceding any date of availability for appointment after January 1, 2008; and

(1) *Appointments to represent minors in guardianships*

For an appointment to represent a minor in a guardianship:

- (A) Within the five years immediately before the date of first availability for appointment after January 1, 2008, must have represented at least three wards or proposed wards in probate guardianships, three children in juvenile court dependency or delinquency proceedings, or three children in custody proceedings under the Family Code; or

- (B) At the time of appointment, must be qualified:
 - (i) For appointments to represent children in juvenile dependency proceedings under rule 5.660 and the court's local rules governing court-appointed juvenile court dependency counsel; or
 - (ii) For appointments to represent children in custody proceedings under the Family Code under rule 5.242, including the alternative experience requirements of rule 5.242(g).
- (C) Except as provided in (f)(2), counsel qualified for appointments in guardianships under (B) must satisfy the continuing education requirements of this rule in addition to the education or training requirements of the rules mentioned in (B).

(2) *Appointments to represent conservatees or proposed conservatees*

For an appointment to represent a conservatee or a proposed conservatee, within the five years immediately before the date of first availability for appointment after January 1, 2008, counsel in private practice must have:

- (A) Represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships; or
- (B) Completed any three of the following five tasks:
 - (i) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;
 - (ii) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party in two contested probate or LPS conservatorship matters. A contested matter that qualifies under this item and also qualifies under (i) may be applied toward satisfaction of both items;
 - (iii) Represented a party for whom the court could appoint legal counsel in a total of three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
 - (iv) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under division 9 of the Probate Code; or

- (v) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.
- (3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must also be covered by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2009.)

(c) Qualifications of deputy public defenders performing legal services on court appointments of the public defender

- (1) Except as provided in this rule, beginning on January 1, 2008, each county deputy public defender with direct responsibility for the performance of legal services in a particular case on the appointment of the county public defender under Probate Code sections 1470 or 1471 must be an active member of the State Bar of California for at least three years immediately before the date of appointment; and either
 - (A) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships; or
 - (B) Have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in postcertification judicial proceedings or conservatorships under the LPS Act.
- (2) A deputy public defender qualified under (1) must also be covered by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year, or be covered for professional liability at an equivalent level by a self-insurance program for the professional employees of his or her county.
- (3) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy public defender with direct responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

(d) Transitional provisions on qualifications

- (1) Counsel appointed before January 1, 2008, may continue to represent their clients through March 2008, whether or not they are qualified under (b) or (c). After March 2008, through conclusion of these matters, the court may retain or replace appointed counsel who are not qualified under (b) or (c) or may appoint qualified co-counsel to assist them.
- (2) In January, February, and March 2008, the court may appoint counsel in new matters who have not filed the certification of qualifications required under (h) at the time of appointment but must replace counsel appointed under this paragraph who have not filed the certificate before April 1, 2008.

(e) Exemption for small courts

- (1) Except as provided in (2) and (3), the qualifications required under (b) or (c) may be waived by a court with four or fewer authorized judges if it cannot find qualified counsel or for other grounds of hardship.
- (2) A court described in (1) may, without a waiver, appoint counsel in private practice who do not satisfy the insurance requirements of (b)(3) if counsel demonstrate to the court that they are adequately self-insured.
- (3) A court may not waive or disregard the self-insurance requirements of (c)(2) applicable to deputy public defenders.
- (4) A court waiving the qualifications required under (b) or (c) must make express written findings showing the circumstances supporting the waiver and disclosing all alternatives considered, including appointment of qualified counsel from adjacent counties and other alternatives not selected.

(Subd (e) amended effective January 1, 2009.)

(f) Continuing education of appointed counsel

- (1) Except as provided in (2), beginning on January 1, 2008, counsel appointed by the court must complete three hours of education each calendar year that qualifies for Minimum Continuing Legal Education credit for State Bar–certified specialists in estate planning, trust, and probate law.
- (2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and who are appointed to represent minors in guardianships of the person only may satisfy the continuing education requirements of this rule by satisfying the annual education and training required under rule 5.242(d) or the continuing education required under rule 5.660(d)(3).

(Subd (f) amended effective January 1, 2011; previously amended effective January 1, 2009.)

(g) Additional court-imposed qualifications, education, and other requirements

The qualifications in (b) and (c) and the continuing education requirement in (f) are minimums. A court may establish higher qualification or continuing education requirements, including insurance requirements; require initial education or training; and impose other requirements, including an application by private counsel.

(h) Initial certification of qualifications; annual post-qualification reports and certifications

- (1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, including deputy public defenders, must certify to the court in writing before April 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.
- (2) After March 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.
- (3) Each counsel appointed or eligible for appointment by the court under this rule must immediately advise the court of the imposition of any State Bar discipline.
- (4) Beginning in 2009, each appointed counsel must certify to the court before the end of March of each year that:
 - (A) His or her history of State Bar discipline and professional liability insurance coverage or, if appointed by a court with four or fewer authorized judges under (e)(2), the adequacy of his or her self-insurance, either has or has not changed since the date of his or her qualification certification or last annual certification; and
 - (B) He or she has completed the continuing education required for the preceding calendar year.
- (5) Annual certifications required under this subdivision showing changes in State Bar disciplinary history, professional liability insurance coverage, or adequacy of self-insurance must include descriptions of the changes.
- (6) Certifications required under this subdivision must be submitted to the court but are not to be filed or lodged in a case file.

(Subd (h) amended effective January 1, 2009.)

(i) Reporting

The AOC may require courts to report appointed counsel's qualifications and completion of continuing education required by this rule to ensure compliance with Probate Code section 1456.

Rule 7.1101 amended effective January 1, 2011; adopted effective January 1, 2008; previously amended effective January 1, 2009.