

Chapter 8

Accounts, Compensation and Distributions

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

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

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

Rule 608.02 Required Form of Accounts for Conservatorships and Guardianships

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

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

Rule 608.03 General Information on Compensation

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

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

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

Rule 608.04 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

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

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

(Adopted effective July 1, 1992)

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

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

(Adopted effective July 1, 1992)

Rule 608.07 Vacated

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

Rule 608.08 Creditors' Claims

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

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

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

Rule 608.09 Administration Costs

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

(Adopted effective July 1, 1992)

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Rule 608.10 Taxes

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

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

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

Rule 608.11 Health Care Benefits

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

(Adopted effective July 1, 1992)

Rule 608.12 Vacated

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

Rule 608.13 Election by Spouse to Submit Property to Administration

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

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

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

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

(Adopted effective July 1, 1992)

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Rule 608.14 Disclaimers

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

(Adopted effective July 1, 1992)

Rule 608.15 Vacated

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

Rule 608.16 Distributions to Assignees

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

(Adopted effective July 1, 1992)

Rule 608.17 Notice to Trust Beneficiaries

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

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

(Adopted effective July 1, 1992)

Rule 608.18 Vacated

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

Rule 608.19 Orders Dispensing with Accounts in Guardianships and Conservatorships

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

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

Rule 608.20 Completeness of Petitions, Accounts and Orders

Each account, report of administration, and petition for final (but not necessarily preliminary) distribution must identify all assets on hand (including cash) at the end of the accounting period or at a specified date reasonably close in time to the date a report or petition

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not accompanied by an account is presented to the court. However, complete legal descriptions need only be included when distribution is requested.

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

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

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

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

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

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

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

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

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

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order made under Probate section 13150, et seq., or 13650, et seq., a copy of the order;

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

(Adopted effective July 1, 1992)

Rule 608.22 Vacated

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