

## **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 7.5. Waivers of court fees in decedents' estates, conservatorships, and guardianships**

##### **(a) Scope of rule**

This rule governs initial fee waivers, as defined in rule 3.50(b), that are requested by petitioners for the appointment of fiduciaries, or by fiduciaries after their appointment, in decedents' estates, conservatorships, and guardianships under the Probate Code. The rule also governs initial fee waivers in other civil actions or proceedings in which conservators or guardians are parties representing the interests of their conservatees or wards.

##### **(b) Court fee waiver requested by a petitioner for the appointment of a conservator or guardian of the person, estate, or person and estate of a conservatee or ward**

A petitioner for the appointment of a conservator or guardian of the person, estate, or person and estate of a conservatee or ward must base an application for an initial fee waiver on the personal financial condition of the proposed conservatee or ward.

##### **(c) Court fee waiver requested by a petitioner for the appointment of a personal representative of a decedent's estate**

A petitioner for the appointment of a personal representative of a decedent's estate must base an application for an initial fee waiver on the petitioner's personal financial condition.

##### **(d) Effect of appointment of a personal representative of a decedent's estate on a court fee waiver**

The appointment of a personal representative of a decedent's estate may be a change of financial condition for fee waiver purposes under Government Code section 68636 in accordance with the following:

- (1) If the successful petitioner is an appointed personal representative:
  - (A) The petitioner's continued eligibility for an initial fee waiver must be based on the combined financial condition of the petitioner and the decedent's estate.

- (B) Upon marshaling or collecting assets of the decedent's estate following the petitioner's appointment and qualification as personal representative, the petitioner must notify the court of a change in financial condition under Government Code section 68636(a) that may affect his or her ability to pay all or a portion of the waived court fees and costs.
  - (C) The court may make a preliminary determination under Government Code section 68636(b) that the petitioner's appointment as fiduciary is a change of financial condition that makes the petitioner no longer eligible for an initial fee waiver based, in whole or in part, on the estimates of estate value and income contained in the petitioner's *Petition for Probate*. In that event, the court must give notice and conduct the hearing required by section 68636(b).
- (2) If the successful petitioner is not an appointed personal representative:
- (A) An initial fee waiver for that petitioner continues in effect according to its terms for subsequent fees incurred by that petitioner in the proceeding solely in his or her individual capacity.
  - (B) The appointed personal representative may apply for an initial fee waiver. The application must be based on the combined financial condition of the personal representative and the decedent's estate.
- (e) Financial condition of the conservatee or ward**
- (1) The financial condition of the conservatee or ward for purposes of this rule includes:
- (A) The financial condition—to the extent of the information known or reasonably available to the conservator or guardian, or the petitioner for the conservator's or guardian's appointment, upon reasonable inquiry—of any person who has a duty to support the conservatee or ward, including a spouse, registered domestic partner, or parent. A divorced spouse's or divorced registered domestic partner's duty to support a conservatee and a parent's duty to support a ward under this subparagraph is limited to the amount of support ordered by a court. Consideration of a support order as an element of the conservatee's or ward's financial condition under this rule is subject to the provisions of Government Code sections 68637(d) and (e), concerning the likelihood that the obligated person will pay all or any portion of the support ordered by the court;

- (B) A conservatee’s interest in community property that is outside the conservatorship estate and under the management or control of the conservatee’s spouse or registered domestic partner; and
  - (C) The right to receive support, income, or other distributions from a trust or under a contract.
- (2) Following the appointment of a conservator or guardian and the grant of an initial fee waiver based on the financial condition of the conservatee or ward, the conservator or guardian is the “person who received the initial fee waiver” for purposes of Government Code section 68636(a), whether or not he or she was the successful applicant for the initial waiver. The conservator or guardian must report to the court any changes in the financial condition of the conservatee or ward that affects his or her ability to pay all or a portion of the court fees and costs that were initially waived, including any changes in the financial condition of the persons or property mentioned in subparagraphs (1)(A) and (1)(B) of this subdivision of which the conservator or guardian becomes aware after reasonable investigation.
- (f) Additional discretionary factors in the financial condition or circumstances of a decedent’s, conservatee’s, or ward’s estate**
- (1) The financial condition of the decedent’s, conservatee’s, or ward’s estate for purposes of this rule may, in the court’s discretion, include consideration of:
    - (A) The estate’s liquidity;
    - (B) Whether estate property or income is necessary for the support of a person entitled to a family allowance from the estate of a decedent, the conservatee or a person entitled to support from the conservatee, or the ward; or
    - (C) Whether property in a decedent’s estate is specifically devised.
  - (2) If property of the estate is eliminated from consideration for initial court fee waiver purposes because of one or more of the factors listed in (1), the court may determine that the estate can pay a portion of court fees, can pay court fees over time, or can pay court fees at a later time, under an equitable arrangement within the meaning of Government Code sections 68632(c) and 68634(e)(5). An equitable arrangement under this paragraph may include establishment of a lien for initially waived court fees against property distributable from a decedent’s estate or payable to the conservatee or ward or other successor in interest at the termination of a conservatorship or guardianship.

**(g) Payment of previously waived court fees by a decedent’s estate**

If the financial condition of a decedent’s estate is a change of financial condition of a fee waiver applicant under this rule that results in withdrawal of a previously granted initial waiver of fees in favor of a petitioner for the appointment of a personal representative, the estate must pay to the court, as an allowable expense of administration, the fees and costs previously waived.

**(h) Termination or modification of previously granted initial fee waivers**

*(1) Conservatorships and guardianships of the estate or person and estate*

Upon establishment of a conservatorship or guardianship of the estate or person and estate, the court may collect all or a portion of court fees previously waived from the estate of the conservatee or ward if the court finds that the estate has the ability to pay the fees, or a portion thereof, immediately, over a period of time, or under some other equitable agreement, without using moneys that normally would pay for the common necessities of life for the conservatee or ward and his or her family. The court must comply with the notice and hearing requirements of the second paragraph of Government Code section 68634(e)(5) to make the findings authorized in this paragraph.

*(2) Conservatorships and guardianships of the person*

In a conservatorship or guardianship of the person, if the court seeks to reconsider or modify a court fee waiver previously granted based on collection, application, or consideration of support, assets, or income described in (e), it must proceed as provided in Government Code section 68636 and comply with the notice and hearing requirements of the second paragraph of Government Code section 68634(e)(5), including notice to the conservator or guardian, any support obligor, and any person in possession of the assets or income. The conservator or guardian must appear at the hearing on behalf of the conservatee or ward, and the court may also appoint counsel for the conservatee or ward under Probate Code section 1470.

**(i) Civil actions in which a conservator or guardian is a party representing the interests of a conservatee or ward**

In a civil action in which a conservator or guardian is a party representing the interests of a conservatee or ward against another party or parties, for purposes of Government Code sections 68631.5, 68636, and 68637:

- (1) The conservator or guardian is the person with a duty to notify the court of a change of financial condition under section 68636(a) and the person the court may require to appear at a court hearing under sections 68636(b) and (c);

- (2) The conservatee or ward and the persons identified in subparagraphs (1)(A) and (B) of subdivision (e) of this rule is the person or persons whose change of financial condition or circumstances of which the court is to be notified under section 68636(a); and
- (3) The conservatee or ward is the person or party whose initial fees and costs were initially waived under sections 68636(c) and 68637.

**(j) Advances of court fees and costs by legal counsel**

- (1) Government Code section 68633(g)—concerning agreements between applicants for initial court fee waivers and their legal counsel for counsel to advance court fees and costs and court hearings to determine the effect of the presence or absence of such agreements on the applications—applies to proceedings described in this rule.
- (2) Conservators, guardians, and petitioners for their appointment applying for initial fee waivers under this rule represented by legal counsel, and their counsel, must complete the *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC), including items 2a and 2b, and, if a request to waive additional court fees is made, the *Request to Waive Additional Court Fees (Superior Court) (Ward or Conservatee)* (form FW-002-GC), including items 2a and 2b. The reference to “legal-aid type services” in these forms refers to legal services provided to an applicant by counsel for or affiliated with a qualified legal services project defined in Business and Professions Code section 6213.

**(k) Expiration of initial court fee waivers in decedents’ estates, conservatorships, and guardianships**

“Final disposition of the case” in decedent’s estate, conservatorship, and guardianship proceedings for purposes of determining the expiration of fee waivers under Government Code section 68639 occurs on the later of the following events:

- (1) Termination of the proceedings by order of court or under operation of law in conservatorships and guardianships of the person; or
- (2) Discharge of personal representatives of decedents’ estates and discharge of conservators or guardians of estates.

*Rule 7.5 adopted effective September 1, 2015.*

**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.

**(f) Notice when Indian Child Welfare Act may apply**

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or specified conservatorship proceeding, notice must be given as prescribed in rule 7.1015(e).

*(Subd (f) adopted effective January 1, 2022.)*

*Rule 7.51 amended effective January 1, 2022; adopted January 1, 2003; previously amended effective January 1, 2004.*

**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 7.102. 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 for Approval of Compromise of ~~Disputed~~ Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350) and *Petition for Expedited Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX).

*(Subd (b) amended effective January 1, 2021; adopted effective January 1, 2007; previously amended effective January 1, 2010, and January 1, 2014.)*

**(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, 2021; adopted effective January 1, 2001; previously amended effective January 1, 2002, January 1, 2007, January 1, 2010, and January 1, 2014.*

**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 [Repealed]***

**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 [Repealed]**

*Rule 7.151 repealed effective January 1, 2020; adopted effective January 1, 2004; previously amended effective January 1, 2007 and March 1, 2008.*

**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 [Repealed]***

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

***Rule 7.553. Graduated filing fee statements for decedents’ estates commenced on or after January 1, 2008 [Repealed]***

***Rule 7.575. Accountings 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

*(Subd (b) amended effective January 1, 2020; adopted as part of unlettered subdivision; previously amended effective January 1, 2004 and January 1, 2007.)*

*Rule 7.550 amended effective January 1, 2020; adopted effective January 1, 2003; previously amended effective January 1, 2004, and January 1, 2007.*

**Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries  
[Repealed]**

*Rule 7.551 repealed effective January 1, 2015; 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 [Repealed]**

*Rule 7.552 repealed effective January 1, 2015; adopted effective January 1, 2004; previously amended effective January 1, 2007, and March 1, 2008.*

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

*Rule 7.553 repealed effective January 1, 2015; adopted effective March 1, 2008.*

**Rule 7.575. Accounting of conservators and guardians**

Unless waived by the court under Probate Code section 2628, a conservator or guardian of the estate must file accountings in the frequency, manner, and circumstances specified in Probate Code section 2620. The court may order accountings to be filed more frequently than required by the statute. An accounting must be filed as a standard accounting unless this rule authorizes filing a simplified accounting.

**(a) Information required in all accountings**

Notwithstanding any other provision of this rule or the Judicial Council accounting forms, each accounting filed with the court must include:

- (1) All information required by Probate Code section 1061 in the *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM));
- (2) All information required by Probate Code sections 1062–1063 in the supporting schedules; and
- (3) All information required by Probate Code section 1064 in the petition for approval of the accounting or the report accompanying the petition.

*(Sub (a) amended effective January 1, 2020.)*

**(b) Supporting documents**

Each accounting filed with the court must include the supporting documents, including all original statements, specified in section 2620(c) of the Probate Code.

- (1) If a conservator or guardian receives a statement from the issuing institution in electronic form but not in paper form, the court has discretion to accept a computer-generated printout of that statement as an original in satisfaction of the requirements in section 2620(c) if:
  - (A) The fiduciary submitting the printout verifies under penalty of perjury that the statement was received in electronic form and printed without alteration; and

(B) The printout is an “original,” as defined in Evidence Code section 255.

- (2) This rule does not authorize a fiduciary to submit, or a court to accept, a copy of a statement in support of an accounting filed under section 2620.

*(Subd (b) adopted effective January 1, 2020.)*

**(c) Standard accounting authorized or required**

A “standard accounting” reports receipts and disbursements in subject-matter categories, with each category subtotaled on a separate form. A conservator, guardian, or trustee must file each accounting as a standard accounting unless a simplified accounting is authorized in (d)(1).

*(Subd (c) relettered and amended effective January 1, 2020; adopted as subd (b) effective January 1, 2008.)*

**(d) Simplified accounting**

A “simplified accounting” reports individual receipts and disbursements chronologically, by receipt or payment date, without separating them into subject-matter categories.

- (1) A conservator, guardian, or trustee may file a simplified accounting only if all the following requirements are met:
- (A) The estate or trust contains no income-generating real property;
  - (B) The estate or trust contains neither a whole nor a partial interest in a trade or business;
  - (C) The appraised value of the estate or trust, excluding the value of the conservatee’s or ward’s personal residence, is less than \$500,000; and
  - (D) The court has not directed the fiduciary to file a standard accounting.
- (2) If the requirements in (1) are met, but either *Schedule A, Receipts—Simplified Account* (form GC-405(A)) or *Schedule C, Disbursements—Simplified Account* (form GC-405(C)) would be longer than five pages, the fiduciary must use the standard receipt forms—forms GC-400(A)(1)–(6)—or the standard disbursement forms—forms GC-400(C)(1)–(11)—as applicable, but may otherwise file a simplified accounting.

*(subd (d) relettered and amended effective January 1, 2020; adopted as subd (C) effective January 1, 2008.)*

**(e) Judicial Council forms**

The Judicial Council has approved two overlapping sets of forms for accountings in conservatorships and guardianships.

- (1) Forms intended for use in standard accountings are numbered GC-400.
- (2) Forms intended for use in simplified accountings are numbered GC-405.
- (3) Forms intended for use in both accounting formats bear both numbers.
- (4) Each form number is followed by a suffix—for example, GC-405(A)—to specify that form’s intended use. The suffix indicates either the letter or the subject matter of the form’s schedule.
- (5) The *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)) must be used in all accountings.
- (6) Except for the *Summary of Account*, all standard accounting forms are optional. A fiduciary who files a standard accounting and elects not to use the Judicial Council forms must:
  - (A) Report receipts and disbursements in the subject-matter categories specified on the Judicial Council standard accounting forms for receipts and disbursements schedules;
  - (B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required on the applicable Judicial Council standard accounting form; and
  - (C) Provide the information in the same general format as that of the applicable Judicial Council standard accounting form, except that instructional material and material contained or requested in the form’s header and footer may be omitted.
- (7) *Schedule A, Receipts—Simplified Account* (form GC-405(A)) and *Schedule C, Disbursements—Simplified Account* (form GC-405(C)) must be used in all simplified accountings unless (d)(2) requires use of the standard forms for Schedule A or Schedule C.
- (8) A fiduciary filing a simplified accounting must use the appropriate form in the GC-405 series whenever the accounting covers an asset, a transaction, or an event to which that form applies.

**(f) Order waiving an accounting**

The court may make an order waiving an otherwise required accounting if all the conditions in Probate Code section 2628(a) are met. If the conservatee or ward owns a personal residence, the request for an order waiving the accounting must include, in addition to the information needed to verify that all the conditions in section 2628(a) are met, the following information and documents regarding the personal residence:

- (1) The street address of the residence;
- (2) A true copy of the most recent residential property tax bill;
- (3) A true copy of the declarations page from the homeowner's insurance policy covering the residence;
- (4) A true copy of the most recent statement for any mortgage or loan secured by the residence; and
- (5) A true copy of the most recent fee or dues statement for any homeowners' association or similar association.

*(Subd (f) adopted effective January 1, 2020.)*

*Rule 7.575 amended effective January 1, 2020; adopted effective January 1, 2008; previously amended effective January 1, 2010.*

### **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	\$ (_____)
<b>TOTAL COMMISSION OR FEE BASE</b>	<b>\$ _____</b>

**COMMISSION OR FEE COMPUTATION**

4% on first \$100,000	(\$ _____) <sup>1</sup>	\$ _____ <sup>2</sup>
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	(\$ _____)	\$ _____
<b>TOTAL COMMISSION OR FEE</b>		<b>\$ _____<sup>3</sup></b>

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 7.802. Electronic filing and service in contested probate proceedings***

#### **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.*

#### **Rule 7.802. Electronic filing and service in contested probate proceedings**

The provisions of Code of Civil Procedure section 1010.6 and rules 2.250–2.261 of the California Rules of Court concerning filing and service by electronic means apply to contested proceedings under the Probate Code and the Probate Rules to the same extent as they apply to other contested civil proceedings in each superior court in this state.

*Rule 7.802 adopted effective January 1, 2016.*

## 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 approval of compromise of claim or action or disposition of proceeds of judgment for minor or person with a disability***

***Rule 7.950.5. Petition for expedited approval of compromise of claim or action or disposition of proceeds of judgment for minor or person with a disability***

***Rule 7.951. Disclosure of attorney's interest in petition for approval of compromise of claim***

***Rule 7.952. Attendance at hearing on petition for approval of compromise of 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 approval of compromise of claim or action or disposition of proceeds of judgment for minor or person with a disability**

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 the disposition of the proceeds of a judgment for a minor or person with a disability under Probate Code sections 3500 and 3600–3613 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 submitted on a completed *Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350).

*Rule 7.950 amended effective January 1, 2021; adopted effective January 1, 2002; previously amended effective January 1, 2007, and January 1, 2010.*

**Rule 7.950.5. Petition for expedited approval of compromise of claim or action or disposition of proceeds of judgment for minor or person with a disability**

**(a) Authorized use of petition for expedited approval**

If all the circumstances specified in paragraphs (1) through (9) of this rule exist, 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 the disposition of the proceeds of a judgment for a minor or person with a disability under Probate Code sections 3500 and 3600–3613 or Code of Civil Procedure section 372 may satisfy the disclosure requirements of rule 7.950 by submitting the petition on a completed *Petition for Expedited Approval of Compromise of Claim or 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 claimant with a disability (exclusive of interest and costs) or the total amount payable to the minor or claimant with a disability 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 claimant with a disability 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 claim from assets other than the proceeds of their liability insurance policies; and
- (9) The court does not otherwise order.

*(Subd (a) amended effective January 1, 2021.)*

**(b) Determination of expedited petition**

A petition for expedited approval 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),<sup>2</sup> or the time for determination is extended for good cause by order of the court.

*(Subd (b) amended effective January 1, 2021.)*

**(c) Hearing on expedited petition**

- (1) The petition for expedited approval must be determined by the court without a hearing unless:
  - (A) A hearing is requested by the petitioner at the time the petition is filed;
  - (B) An objection or other opposition to the petition is filed by an interested party; or
  - (C) 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 a petition for expedited approval. 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 petition is filed.
- (3) If the court decides not to grant a petition for expedited approval 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).

*(Subd (c) amended effective January 1, 2021.)*

*Rule 7.950.5 amended effective January 1, 2021; adopted effective January 1, 2010.*

**Rule 7.951. Disclosure of attorney's interest in petition for approval of compromise of claim**

If the petitioner has been represented or assisted by an attorney in preparing the petition for approval of the compromise of 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 amended effective January 1, 2021; adopted effective January 1, 2002.*

**Rule 7.952. Attendance at hearing on the petition for approval of compromise of claim**

**(a) Attendance of the petitioner and claimant**

The person petitioning for approval of the compromise of 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 petition unless the court for good cause dispenses with their personal appearance.

*(Subd (a) amended effective January 1, 2021; previously amended effective January 1, 2007.)*

**(b) Attendance of the physician and other witnesses**

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

*(Subd (b) amended effective January 1, 2021.)*

*Rule 7.952 amended effective January 1, 2021; adopted effective January 1, 2002; previously amended effective January 1, 2007.*

**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 in part after those provided in rule 1.5 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 1.5 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 7.1002.5. Guardianship of ward 18 to 20 years of age***

***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***

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***Rule 7.1016. Participation and testimony of wards in guardianship proceedings***

***Rule 7.1020. Special Immigrant Juvenile Findings 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 July 1, 2016; adopted effective January 1, 2001; previously amended effective January 1, 2002, and January 1, 2007.*

**Rule 7.1002.5. Guardianship of ward 18 to 20 years of age**

**(a) Authority**

The court may extend an existing guardianship of the person past a ward's 18th birthday or appoint a new guardian of the person for a ward who is at least 18 but not yet 21 years of age if the ward is the petitioner or has given consent as provided in section 1510.1 of the Probate Code and this rule.

**(b) Consent to appointment of guardian of the person**

The court may appoint a new guardian of the person under this rule only if the ward has given consent, both to the appointment and to the guardian's performance of the duties of a guardian, by signing the petition.

**(c) Consent to extension of guardianship of the person**

The court may extend a guardianship of the person under this rule only if the ward has given consent, both to the extension and to the guardian's continued

performance of the duties of a guardian, by signing the *Petition to Extend Guardianship of the Person* (form GC-210(PE)).

**(d) Dispute**

In the event of a dispute over the guardian's intended action, the guardian may not act against the ward's desires without the ward's express consent unless failure to act as intended would breach the guardian's fiduciary duties to the ward.

**(e) Modification of consent**

- (1) A ward may withdraw his or her consent to the establishment or extension of a guardianship under this rule by filing a petition to terminate the guardianship under rule 7.1004(b)(2)(B).
- (2) In addition to any other petition authorized by section 2359(a), the ward may file a petition at any time during a guardianship established or extended under this rule to withdraw or modify his or her consent to the guardian's performance of a specific duty or duties.

*Rule 7.1002.5 adopted effective July 1, 2016.*

**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.)*

**(c) Access to status report**

- (1) Except as provided in paragraph 2, the clerk must make a status report submitted under Probate Code section 1513.2 available only to persons served in the guardianship proceedings or their attorneys.
- (2) If the ward is an Indian child and the child's tribe has intervened in the proceeding, the clerk must also make the status report available to the representative designated by the child's tribe.
- (3) Paragraphs (1) and (2) are not intended to preclude an interested person or an Indian child's tribe that has not intervened from filing a petition for a court order directing the clerk to make the status report available to that person or tribe.

*(Subd (c) adopted effective January 1, 2022.)*

*Rule 7.1003 amended effective January 1, 2022; adopted effective January 1, 2004; previously amended effective January 1, 2007.*

**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**

- (1) 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 except as provided in (2), dies, is adopted, or is emancipated.
- (2) If the court has appointed a guardian of the person for a ward 18 years of age or older or extended a guardianship of the person past the ward's 18th birthday, the guardianship terminates:
  - (A) By operation of law when the ward attains 21 years of age, marries, or dies; or



- (B) By order of the court when the ward files a petition under Probate Code section 1601.

*(Subd (b) amended effective July 1, 2016.)*

**(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 amended effective July 1, 2016; 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 and any former Indian custodian;
- (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;
- (6) Any person who was nominated as guardian of the ward but was not appointed guardian in the proceeding; and
- (7) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

*(Subd (a) amended effective January 1, 2022.)*

**(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 and any former Indian custodian;
- (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;
- (5) Any person who was nominated as guardian of the ward but was not appointed guardian in the proceeding; and
- (6) The ward’s tribe, if the ward is an Indian child and the ward’s tribe has intervened in the proceeding.

*(Subd (c) amended effective January 1, 2022.)*

**(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.

**(g) Wards 18 to 20 years of age**

For a ward who is at least 18 but not yet 21 years of age, a copy of any notice under this rule must be mailed only to the ward and the ward's attorney of record.

*(Subd (g) adopted effective July 1, 2016.)*

*Rule 7.1013 amended effective January 1, 2022; adopted effective January 1, 2008; previously amended effective July 1, 2016.*

**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. Guardianship and certain conservatorship proceedings involving Indian children (Prob. Code, §§ 1449, 1459, 1459.5, 1460.2, 1511(b), (i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963; 25 C.F.R. §§ 23.1–23.144)**

**(a) Definitions**

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

- (1) “Act” means the federal Indian Child Welfare Act (25 U.S.C. §§ 1901–1963).
- (2) “Petitioner” refers to:
  - (A) A petitioner for the appointment of a guardian of the person of a minor child; or
  - (B) A petitioner for the appointment of a conservator of the person of a formerly married minor child whose marriage has been dissolved.

*(Subd (a) amended effective January 1, 2022.)*

**(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:
  - (A) A guardianship of the person or of the person and estate, including a temporary guardianship, in which the proposed guardian of the person is not the proposed ward’s biological parent or Indian custodian;
  - (B) A conservatorship or limited conservatorship of the person or of the person and estate, including a temporary conservatorship, of a formerly married minor whose marriage has been dissolved in which the proposed conservator of the person is not the proposed conservatee’s biological parent or Indian custodian and is seeking physical custody of the proposed conservatee.
- (2) Unless the context requires otherwise, rules 5.480 through 5.4878 apply to the proceedings listed in (1).
- (3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.488 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 and to the appointed temporary or general guardian or conservator of the person.

- (4) If the court appoints a guardian or conservator of the person of a child in a proceeding listed in (1), the duties and responsibilities of a petitioner under the Act and this rule become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner knows or possesses concerning the child to the appointed guardian or conservator.

*(Subd (b) amended effective January 1, 2022.)*

**(c) Inquiry**

- (1) The court, at the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner, have an affirmative and continuing duty to inquire whether each child who is the subject of a proceeding identified in (b)(1) is or may be an Indian child.
- (2) Before filing a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child who is the subject of the proceeding, if the child is old enough, the parents, any Indian custodian or previously appointed guardian of the person, and available extended family members, as defined in 25 U.S.C. § 1903(2), or other persons having an interest in the child whether the child is or may be an Indian child, complete *Indian Child Inquiry Attachment* (form ICWA-010(A)), and attach that form to the petition.
- (3) At the beginning of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, the court must:
  - (A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;
  - (B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child; and
  - (C) Order the parent, Indian custodian, or existing guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).
- (4) If the parent, Indian custodian, or guardian is not available at the beginning of a proceeding identified in (b)(1), the court must order the petitioner to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered that person to complete and deliver to the petitioner a *Parental Notification of Indian Status* (form ICWA-020).
- (5) If the court or county investigator, the petitioner, or the attorney for a the petitioner knows or has reason to know or believe that an Indian child is the

subject of the proceeding; but has not conclusively determined that the child is an Indian child, that person must, as soon as practicable, conduct further inquiry by:

- (A) Interviewing the parents, Indian custodian, and “extended family members” to gather the information listed in Welfare and Institutions Code section 224.3(a)(5);
  - (B) Contacting the federal 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;
  - (C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child’s tribal membership or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C); and
  - (D) Filing with the court documentation of that further inquiry, including, at a minimum:
    - (i) The names of all persons contacted and interviewed or attempted to be interviewed under subparagraph (A), the dates of those contacts and interviews, and any information gathered from them; and
    - (ii) The dates and methods of contact with the agencies listed in subparagraph (B) and the tribes and persons in subparagraph (C) and any information gathered as a result of those contacts.
- (6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding; but does not have sufficient evidence to determine that the child is an Indian child, and the further inquiry conducted in (5) has not been conducted, the court must order one or more of the persons named in (5) to conduct the inquiry and submit the documentation described in that paragraph.
- (7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is an Indian child are those set forth in Welfare and Institutions Code section 224.2(d) and rule 5.481(b).

*(Subd (c) amended and relettered effective January 1, 2022; adopted as subd (d) effective January 1, 2008; previously amended effective July 1, 2012.)*

**(d) Temporary guardianships and conservatorships of an Indian child**

In addition to the applicable requirements in Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062, the following requirements apply to temporary guardianship and conservatorship proceedings if the court knows or has reason to know that the proposed ward is an Indian child:

- (1) Before appointing a temporary guardian or conservator of the person for an Indian child over the objection of a parent, tribe, or Indian custodian, the court must:
  - (A) Advise the parent or Indian custodian that if they cannot afford counsel, the court will appoint counsel for them under section 1912(b) of the Indian Child Welfare Act; and
  - (B) Find, in addition to facts in the petition establishing good cause for the appointment and any other showing the court may require under Probate Code section 2250(b), that the appointment is necessary to prevent imminent physical damage or harm to the child.
- (2) At a hearing under Probate Code section 2250(f) or on a petition, including an ex parte petition, to terminate a temporary guardianship or conservatorship of an Indian child, the court must determine whether the temporary guardianship or conservatorship is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the temporary guardianship or conservatorship is no longer necessary, the court must terminate the temporary guardianship or conservatorship and, if a parent or Indian custodian is available, order the child returned to the physical custody of the parent or Indian custodian.
- (3) Before extending a temporary guardianship or conservatorship of an Indian child, under Probate Code section 2257(b), more than 30 days from the date of its establishment, the court must, in addition to finding good cause for the extension, determine that:
  - (A) Terminating the temporary guardianship or conservatorship would subject the child to imminent physical damage or harm;
  - (B) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and
  - (C) It has not been possible to hold a hearing on the petition to appoint a guardian that complies with the substantive requirements of the Act for a foster care placement proceeding.

*(Subd (d) adopted effective January 1, 2022.)*



**(e) 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 Welfare and Institutions Code section 224.2(d) and rule 5.481(b), that an Indian child is the subject of the proceeding, the petitioner and the court must give notice of the proceeding and the right of the child's tribe to intervene in the manner prescribed by Welfare and Institutions Code section 224.3(a) and rule 5.481(c) to the child's parents, the child's Indian custodian or previously appointed guardian of the person, if any, and the child's tribe or, if the child's tribe has not been determined, all tribes of which the child may be a member or eligible for membership.

*(Subd (e) amended and relettered effective January 1, 2022; adopted as Subd (c) effective January 1, 2008.)*

*Rule 7.1015 amended effective January 1, 2022; adopted effective January 1, 2008; previously amended effective July 1, 2012.*

**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.*

## **Rule 7.1020. Special Immigrant Juvenile Findings in Guardianship Proceedings**

### **(a) Application**

This rule applies to a request by or on behalf of a minor who is a ward or a proposed ward in a probate guardianship proceeding for judicial findings needed as a basis for filing a petition for classification as a Special Immigrant Juvenile (SIJ) under federal immigration law. The term "request under this rule" as used in this rule refers exclusively to such a request. This rule also applies to any opposition to a request under this rule, any hearing on such a request and opposition, and any findings of the court in response to such a request.

### **(b) Request for findings**

#### *(1) Who may file request*

Any person or entity authorized under Probate Code section 1510 or 1510.1 to petition for the appointment of a guardian of the person of a minor, including the ward or proposed ward if 12 years of age or older, may file a request for findings regarding the minor under this rule.

- (A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so only for himself or herself.
- (B) The court may appoint an attorney under Probate Code section 1470 or a guardian ad litem under Probate Code sections 1003 and 1003.5 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor's behalf by another.

#### *(2) Form of request*

- (A) A request for findings under this rule must be made by verified petition. A separate request must be filed for each minor seeking SIJ findings.
- (B) A request for findings under this rule by or on behalf of a minor filed concurrently with a petition for the appointment of a guardian of the



person or for extension of a guardianship of the person past the 18th birthday of the minor must be prepared and filed as a separate petition, not as an attachment to the petition for appointment.

*(Subd (b) amended effective July 1, 2016.)*

**(c) Notice of hearing**

Notice of a hearing of a request for findings under this rule, and a copy of the request, must be sent to the minor's parents and the persons listed in section 1460(b) of the Probate Code, in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1 of that code.

**(d) Opposition to request**

Any of the persons who must be given notice of hearing of a request for findings under this rule may file an objection or other opposition to the request.

**(e) Hearing on request**

- (1) If filed concurrently, a request for findings under this rule by or on behalf of a minor and a petition for appointment of a guardian of the person or extension of a guardianship of the person past the 18th birthday of that minor may be heard and determined together.
- (2) Hearings on separate requests for findings under this rule by or on behalf of more than one ward or proposed ward in the same guardianship proceeding may be consolidated on the motion of any party or on the court's own motion.
- (3) Hearings on requests for findings under this rule by or on behalf of minors who are siblings or half-siblings and are wards or proposed wards in separate guardianship proceedings may be consolidated on the motion of any party in either proceeding or on the motion of the court in either proceeding. If multiple departments of a single court or courts in more than one county are involved, they may communicate with each other on consolidation issues in the manner provided for inter-court communications on venue issues in guardianship and family law matters under section 2204 of the Probate Code and rule 7.1014.
- (4) Hearings on contested requests for findings under this rule must be conducted in the same manner as hearings on other contested petitions under the Probate Code.
- (5) Probate Code section 1022 applies to uncontested requests for findings under this rule.

*(Subd (e) amended effective July 1, 2016.)*

**(f) Separate findings in multi-ward cases under this rule**

The court must issue separate findings for each minor in a guardianship proceeding in which more than one minor is the subject of a request under this rule.

*Rule 7.1020 amended effective July 1, 2016; adopted effective January 1, 2016.*

**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***

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

***Rule 7.1060. Investigations and reports by court investigators***

***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***

***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. Appointed Counsel**

***Rule 7.1101. [Repealed]***

***Rule 7.1101. Scope, definitions, and general qualifications***

***Rule 7.1102. Qualifications and annual education required for counsel appointed to represent a ward or proposed ward (Prob. Code, §§1456, 1470(a))***

***Rule 7.1103. Qualifications and annual education required for counsel appointed to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity (Prob. Code, §§ 1456, 1470(a), 1471)***

**Former Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships [Repealed]**

*Rule 7.1101 repealed effective January 1, 2020; adopted effective January 1, 2008; previously amended effective January 1, 2009, January 1, 2011, and January 1, 2016.*

**Rule 7.1101. Scope, definitions, and general qualifications**

**(a) Scope (Prob. Code, §§ 1456, 1470–1471)**

The rules in this chapter establish minimum qualifications, annual education requirements, and certification requirements that an attorney must meet as conditions of court appointment as counsel under Probate Code section 1470 or 1471 in a proceeding under division 4 of that code.

- (1) The rules in this chapter apply to an appointed attorney regardless of whether the attorney is a sole practitioner or works for a private law firm, a legal services organization, or a public defender’s office.
- (2) The rules in this chapter do not apply to:
  - (A) Retained counsel;

- (B) Counsel appointed under the authority of any law other than Probate Code section 1470 or 1471.

**(b) Definitions**

For purposes of this chapter, the following terms are used as defined below:

- (1) “Appointed counsel” or “appointed attorney” means an attorney appointed by the court under Probate Code section 1470 or 1471 who assumes direct personal responsibility for representing a ward or proposed ward, a conservatee or proposed conservatee, or a person alleged to lack legal capacity in a proceeding under division 4 of the Probate Code.
- (2) “Probate guardianship” means any proceeding related to a general or temporary guardianship under division 4 of the Probate Code.
- (3) “Probate conservatorship” means any proceeding related to a conservatorship or limited conservatorship, general or temporary, under division 4 of the Probate Code.
- (4) “LPS Act” refers to the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000–5556), which provides for involuntary mental health treatment and conservatorship for persons who are gravely disabled as the result of a mental health disorder.
- (5) A “contested matter” is a matter that requires a noticed hearing and in which an objection is filed in writing or made orally in open court by any person entitled to appear at the hearing and support or oppose the petition.
- (6) “Trial” means the determination of one or more disputed issues of fact by means of an evidentiary hearing.

**(c) General qualifications**

To qualify for any appointment under Probate Code section 1470 or 1471, an attorney must:

- (1) Be an active member in good standing of the State Bar of California or a registered legal aid attorney qualified to practice law in California under rule 9.45;
- (2) Have had no professional discipline imposed in the 12 months immediately preceding the date of submitting any initial or annual certification of compliance; and

- (3) Have demonstrated to the court that the attorney or the attorney's firm or employer:
  - (A) Is covered by professional liability insurance with coverage limits no less than \$100,000 per claim and \$300,000 per year; or
  - (B) Is covered for professional liability at an equivalent level through a self-insurance program;
- (4) Have met the applicable qualifications and annual education requirements in this chapter and have a current certification on file with the appointing court; and
- (5) Have satisfied any additional requirements established by local rule.

**(d) Local rules**

The rules in this chapter establish minimum qualifications and requirements. Nothing in this chapter prohibits a court from establishing, by local rule adopted under rule 10.613, additional or more rigorous qualifications or requirements.

**(e) Retroactivity**

The amendments to this chapter adopted effective January 1, 2020, are not retroactive. They do not require an attorney who submitted an initial certification of qualifications under this chapter as it read on or before December 31, 2019, to submit a new initial certification.

*Rule 7.1101 adopted effective January 1, 2020.*

**Rule 7.1102. Qualifications and annual education required for counsel appointed to represent a ward or proposed ward (Prob. Code, §§1456, 1470(a))**

Except as provided in rule 7.1104(b), an attorney appointed for a ward or proposed ward must have met the qualifications in either (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

**(a) Experience-based qualifications**

An attorney is qualified for appointment if the attorney has met the experience requirements described in either (1) or (2).

- (1) Within the five years immediately before first availability for appointment, the attorney has personally represented a petitioner, an objector, a respondent, a minor child, or a nonminor dependent in at least three of any combination of the following proceedings, at least one of which must have been a contested matter or trial:



- (A) A probate guardianship proceeding;
  - (B) A juvenile court child welfare proceeding; or
  - (C) A family law child custody proceeding.
- (2) At the time of first availability for appointment, the attorney meets the experience requirements:
- (A) In rule 5.660(d) and any applicable local rules for appointment to represent a minor child or nonminor dependent in a juvenile court child welfare proceeding; or
  - (B) In rule 5.242(f) for appointment to represent a minor child in a family law child custody proceeding.

**(b) Alternative qualifications**

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

- (1) At the time of appointment, the attorney works for an attorney, a private law firm, or a legal services organization approved by the court for appointment under Probate Code section 1470 to represent wards or proposed wards, and the attorney is supervised by or working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a); or
- (2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d) and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

**(c) Annual education**

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a ward or proposed ward must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

**(d) Subject matter and delivery of education**

Education in the following subjects—delivered in person or by any State Bar–approved method of distance learning—may be used to satisfy this rule’s education requirements:

- (1) State and federal statutes—including the federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901–1963)—rules of court, and case law governing probate guardianship proceedings and the legal rights of parents and children;
- (2) Child development, including techniques for communicating with a child client; and
- (3) Risk factors for child abuse and neglect and family violence.

*Rule 7.1102 adopted effective January 1, 2020.*

**Rule 7.1103. Qualifications and annual education required for counsel appointed to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity (Prob. Code, §§ 1456, 1470(a), 1471)**

Except as provided in rule 7.1104(b), an attorney appointed to represent the interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity must have met the qualifications in (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

**(a) Experience-based qualifications**

An attorney is qualified for appointment if, within the five years immediately preceding first availability for appointment, the attorney has personally represented a petitioner, an objector, a conservatee or proposed conservatee, or a person alleged to lack legal capacity or be gravely disabled in at least three separate proceedings under either division 4 of the Probate Code or the LPS Act, including at least one contested matter or trial.

**(b) Alternative qualifications**

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

- (1) At the time of appointment, the attorney works for an attorney, a private law firm, a public defender’s office, or a legal services organization (including the organization designated by the Governor as the state protection and advocacy agency, as defined in section 4900(i) of the Welfare and Institutions Code) approved by the court for appointment to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity, and the attorney is supervised by or working in close professional

consultation with a qualified attorney who has satisfied the experience requirements in (a); or

- (2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d), and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

**(c) Annual education**

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

**(d) Subject matter and delivery of education**

Education in the following subjects—delivered in person or by any State Bar–approved method of distance learning—may be used to satisfy this rule’s education requirements:

- (1) State and federal statutes—including the federal Americans with Disabilities Act (42 U.S.C. §§ 12101–12213)—rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities;
- (2) The attorney-client relationship and lawyer’s ethical duties to a client under the California Rules of Professional Conduct and other applicable law; and
- (3) Special considerations for representing an older adult or a person with a disability, including:
  - (A) Communicating with an older client or a client with a disability;
  - (B) Vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect;
  - (C) Effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person’s ability to perform the activities of daily living; and
  - (D) Less-restrictive alternatives to conservatorship, including supported decisionmaking.

*Rule 7.1103 adopted effective January 1, 2020.*

**Rule 7.1104. Local administration**

**(a) Procedures**

- (1) A local court may create and maintain lists or panels of certified attorneys or approve the public defender’s office and one or more legal services organizations to provide qualified attorneys for appointment under Probate Code sections 1470 and 1471 to represent specific categories of persons in proceedings under division 4 of that code.
- (2) A court may establish, by local rule adopted under rule 10.613, procedural requirements, including submission of an application, as conditions for approval for appointment or placement on a list or panel.

**(b) Exception to qualifications**

A court may appoint an attorney who is not qualified under rule 7.1102 or 7.1103 on an express finding, on the record or in writing, of circumstances that make such an appointment necessary. These circumstances may include, but are not limited to, when:

- (1) No qualified attorney is available for appointment; or
- (2) The needs or interests of the person to be represented cannot be served without the appointment of an attorney who has other specific knowledge, skills, or experience.

*Rule 7.1104 adopted effective January 1, 2020.*

**Rule 7.1105. Certification of attorney qualifications**

**(a) Initial certification**

Before first availability for appointment under Probate Code section 1470 or 1471, an attorney must certify to the court that the attorney:

- (1) Meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and
- (2) Meets the qualifications in rule 7.1102 for appointment to represent wards or the qualifications in rule 7.1103 for appointment to represent conservatees, or both, depending on the appointments the attorney wishes to be available for.

**(b) Annual certification**

To remain eligible for appointment under Probate Code section 1470 or 1471, an attorney who has submitted an initial certification must certify to the court, no later than March 31 of each following year, that:

- (1) The attorney meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and
- (2) The attorney has completed the applicable annual education—in rule 7.1102, 7.1103, or both—required for the previous calendar year.

**(c) Notification of disciplinary action**

An appointed attorney must notify the court in writing within five court days of any disciplinary action taken against the attorney by the State Bar of California. The notification must describe the charges, disposition, and terms of any reproof, probation, or suspension.

**(d) Documentation**

A court to which an attorney has submitted a certification under this rule may require the attorney to submit documentation or other information in support of any statement in the certification.

**(e) Confidentiality**

The certifications required by this rule and any supporting documentation or information submitted to the court must be maintained confidentially by the court. They must not be filed or lodged in a case file.

*Rule 7.1105 adopted effective January 1, 2020.*