

Title 7. Probate Rules

Rule 7.1. Title

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

Rule 7.1 adopted effective January 1, 2008.

Chapter 1. General Provisions

Rule 7.5. Special settings

An ex parte application must be submitted to the court to add any matter on a calendar that is full. Only emergency situations will be considered for such special placement.

Rule 7.5 amended and renumbered effective January 1, 2008; adopted as rule 12.1.1.2 effective May 19, 1998.

Rule 7.10. “Pre-grant” procedures

(a) Definition of “pre-grant”

A “pre-grant” is a tentative grant of a petition before the scheduled hearing.

(b) Review before hearing

Matters appearing on the calendar will be reviewed and may be designated as a “pre-grant”.

(c) Qualification for “pre-grant” status

To qualify for “pre-grant” status, all supporting documents and a proposed order must be submitted at least two days before the scheduled hearing.

(d) Procedure for “pre-grants”

If a matter is designated as a “pre-grant”, the petitioner or moving party is not required to appear at the scheduled hearing. If an objection is filed before the hearing, or one is made at the hearing, the court may grant a continuance to allow a written objection to be filed and served.

Rule 7.10 amended and renumbered effective January 1, 2008; adopted as rule 12.1.5 effective May 19, 1998; previously amended July 1, 1999 and January 1, 2004.

Rule 7.20. Use of alternative dispute resolution processes encouraged

The court finds that it is in the best interests of all parties that they participate in alternatives to traditional litigation, such as arbitration, mediation, neutral evaluation, and voluntary settlement conferences. Therefore, the court may refer cases to an appropriate form of alternative dispute resolution (ADR) before they are set for trial, unless there is good cause to dispense with an alternative dispute resolution process.

Rule 7.20 adopted effective January 1, 2011.

Rule 7.30. Rules for alternative dispute resolution processes other than judicial arbitration.

(a) Selection of provider. The parties may choose any ADR provider they wish, whether or not that provider is on the list described in the following section of these rules.

(b) Good faith participation is required. All parties to an alternative dispute resolution process must participate in the process in good faith.

(c) Personal appearance required. In conducting a session, the ADR provider should require the attendance of persons with full authority to resolve the dispute. The provider should only permit telephone appearances if good cause to waive personal appearance was shown in a timely manner prior to the session.

(d) Cost of the alternative dispute resolution process. Unless the ADR provider's fees and expenses have been ordered by the court, the parties and the provider must agree on the fees and expenses. The fees and expenses of the provider will be borne by the parties equally, unless they agree otherwise.

Rule 7.30 adopted effective January 1, 2011.

Rule 7.40. Alternative dispute resolution provider list.

The court maintains a list of alternative dispute resolution providers to assist parties and counsel in obtaining access to experienced and affordable alternative dispute resolution services. The list includes providers in the areas of mediation, neutral case evaluation, private arbitration, and judicial arbitration. The list, including names, qualifications, services provided and fees charged, will be posted on the court's website and will be available in the office of the ADR program administrator.

Rule 7.40 adopted effective January 1, 2011.

Rule 7.50. ADR Administration Committee and complaint procedure

The provisions of Local Rules 3.740 (The ADR Administration Committee) 3.750 (Complaint procedure) and 3.760 (Inquiries and complaints) are applicable.

Rule 7.50 adopted effective January 1, 2011.

Chapter 2. [Reserved]

Chapter 3. Pleadings

Rule 7.150. Copy of will and codicil

A copy of each will and codicil must be attached to the petition for probate. In addition, a typewritten copy of each holographic document must be attached.

Rule 7.150 amended and renumbered effective January 1, 2008; adopted as rule 12.2.2.4 effective May 19, 1998.

Chapters 4 through 9. [Reserved]

Chapter 10. Sales of Real and Personal Property in Decedent's Estates

Rule 7.300. Reappraisals

(a) When reappraisal is required

When the date of the confirmation hearing is more than one year after date of death, a reappraisal for sale must be filed with the court before the confirmation hearing can proceed.

(b) Responsibility for performing reappraisal

Reappraisals must be made by the probate referee unless the court has waived appointment of the referee.

(c) Contents

The following information should be inserted in the reappraisal for sale immediately after the legal description of the real property:

- (1) The appraised value as of the date of death.

- (2) The appraised value as of the date of the appraisal.

Rule 7.300 amended and renumbered effective January 1, 2008; adopted as rule 12.8.1 effective May 19, 1998.

Rule 7.310. Cash deposit on bids for real property

Bids for the purchase of real property must be accompanied by a minimum of ten percent of the amount bid. When an overbid is made in court, the bidder must submit cash, money order, or certified check at the time of the hearing in the amount of ten percent of the minimum overbid.

Rule 7.310 amended and renumbered effective January 1, 2008; adopted as rule 12.8.4 effective May 19, 1998.

Rule 7.320. Disclosure of extraordinary costs

(a) Disclosure of extraordinary costs in petition

The petition must include a full disclosure of all extraordinary costs that the estate will incur as a result of the sale. Such costs include, but are not limited to, termite and other repairs, lender's "points", loan fees, and nonrecurring closing costs. The exact amounts required or the maximum that the estate will be required to pay must be disclosed in the petition and included in the order.

(b) Deduction of extraordinary costs

Extraordinary costs will be deducted from the gross bid, and the resulting amount will be used for the following purposes:

- (1) To determine if the sale is within ninety percent of the appraised value;
- (2) To determine the base number against which overbids are made; and
- (3) To determine the real estate broker's commission.

(c) Contents of petition

The amounts described in the preceding subdivision must be set forth in an attachment to the petition.

Rule 7.320 amended and renumbered effective January 1, 2008; adopted as rule 12.8.7 effective May 19, 1998.

Rule 7.330. Notice of confirmation hearing

In addition to complying with the requirements for notice that are contained in Probate Code section 10308, subdivision (c), notice of the hearing for confirmation of a sale of real property must be mailed at least 15 days prior to the hearing date to all heirs and beneficiaries who may have an interest in the subject real property.

Rule 7.330 amended and renumbered effective January 1, 2008; adopted as rule 12.8.8 effective May 19, 1998.

Rule 7.340. Appearance by bidders

Any potential bidders and their representatives must appear at the time the petition for confirmation of sale is heard.

Rule 7.340 amended and renumbered effective January 1, 2008; adopted as rule 12.8.9 effective May 19, 1998.

Rule 7.350. Sale of specifically devised or bequeathed property

On the sale of any property that was specifically devised or bequeathed, the petitioner must either serve notice of the time and place of the hearing on the petition to confirm the sale to the specific devisee or legatee or the consent of the devisee or legatee to such sale must be filed with the court.

Rule 7.350 amended and renumbered effective January 1, 2008; adopted as rule 12.8.12 effective May 19, 1998.

Rule 7.360. Sale of securities

(a) Verified petition required for authorization to sell securities

A verified petition for authorization of sale of stocks, bonds or other securities described in Probate Code section 10200 must contain an allegation regarding any request for special notice and compliance with such request and one or more of the following:

- (1) A statement as to necessity for sale, giving the reasons the sale is necessary, for instance for payment of taxes, expenses of administration, or existence of an indivisible number of shares.
- (2) The consent or request of heirs.
- (3) If the securities are specifically bequeathed, the petition must so state and the written consent of the legatee must be filed.

(4) An allegation that a power of sale is conferred by the will.

(b) Sale of unlisted securities

If securities to be sold are not listed on an established stock or bond exchange, they may be sold at a minimum price per share or bond, based on a recent market quotation, as set forth in the petition. The market quotation may be obtained from financial publications or from securities brokers. If such securities are closely held, or there are no recent market quotations available, the petition should set forth the basis for fixing the minimum sales price, for example by reference to the Inventory and Appraisal value.

Rule 7.360 amended and renumbered effective January 1, 2008; adopted as rule 12.8.13 effective May 19, 1998.

Chapter 11. [Reserved]

Chapter 12. Accounts and Reports of Executors and Administrators

Rule 7.380. Notation of omitted schedules

Where a particular schedule is unnecessary, it need not be included and that fact must be noted in the Summary of Account with the word "none" in the blank provided for the total from the schedule.

Rule 7.380 amended and renumbered effective January 1, 2008; adopted as rule 12.9.1.2 effective May 19, 1998; previously amended July 1, 1999.

Rule 7.390. Contents of account

The account and report must contain the following material:

- (1) The beginning and ending dates of the account.
- (2) A detailed description of all receipts and all disbursements of the fiduciary.
- (3) An explanation either in the account or in the report accompanying the account for any item that is not self-explanatory.
- (4) Receipts indicating the date of receipt, the source of the payment, and the amount. Each receipt from a source that pays more frequently than once a year must be described; a lump sum amount is not permissible.

- (5) A description of all disbursements indicating the date of the expenditure and the nature of the expense, its purpose, and the amount.

Rule 7.390 amended and renumbered effective January 1, 2008; adopted as rule 12.9.1.3 effective May 19, 1998; previously amended July 1, 1999.

Chapters 13 [Reserved]

Chapter 14. Preliminary and Final Distributions

Rule 7.400. Form of decrees

A decree of distribution must be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as the decedent's will. If the distribution includes any interest in real property, the legal description, including the assessor's parcel number, must be included in the body of the decree or in an attachment incorporated by reference.

Rule 7.400 moved to Chapter 14 effective July 1, 2008; adopted as rule 12.11.7 effective May 19, 1998; previously amended July 1, 1999; previously amended, renumbered, and placed under Chapter 15 effective January 1, 2008.

Chapter 15. Compensation of Personal Representatives and Attorneys

Rule 7.410. Extraordinary compensation when statutory compensation exceeds \$20,000

Whenever statutory compensation exceeds \$20,000 and the attorney or personal representative requests extraordinary compensation that exceed the amounts of rules 7.420 or 7.430 below, the request must be supported with a declaration that outlines all the ordinary and extraordinary services that were provided.

Rule 7.410 reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.6.2 effective May 19, 1998; previously amended January 1, 2004; repealed effective January 1, 2008.

Rule 7.420. Extraordinary compensation for sales of real property

The court will customarily award the following amounts as extraordinary compensation for attorneys without further supporting declaration:

- (1) One thousand dollars for court-confirmed sales of real property; and,

- (2) Seven hundred fifty dollars for non court-confirmed sales of real property under the Independent Administration of Estates Act.

Rule 7.420 reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.7 effective May 19, 1998; repealed effective January 1, 2008.

Rule 7.430. Extraordinary compensation for preparation of tax returns

The court will customarily award \$1,500 as extraordinary compensation for attorneys or personal representatives for the preparation of both federal and California estate tax returns without requiring a supporting declaration.

Rule 7.430 reenacted and renumbered effective July 1, 2008; adopted as rule 12.10.8.1 effective May 19, 1998; repealed effective January 1, 2008.

Chapters 16 through 18. [Reserved]

Chapter 19. Trusts

Rule 7.500. Requirements for trustee's accounts

Accounts filed by trustees must conform to the requirements in rule 7.390.

Rule 7.500 amended and renumbered effective January 1, 2008; adopted as rule 12.16.1.1 effective May 19, 1998.

Rule 7.510. Contents of first account

The first account filed must clearly reconcile the amount first chargeable with the decree of distribution of the estate from which the property was received.

Rule 7.510 amended and renumbered effective January 1, 2008; adopted as rule 12.16.1.2 effective May 19, 1998.

Rule 7.520. Description of principal and income

Receipts and disbursements must be allocated between principal receipts and disbursements and income receipts and disbursements.

Rule 7.520 amended and renumbered effective January 1, 2008; adopted as rule 12.16.2 effective May 19, 1998.

Rule 7.530. Frequency for filing accounts

Trustees must file accounts at least every two years. The fact that an account covers more than a two-year period of time will not constitute grounds for deviation from any of the normal requirements of an account.

Rule 7.530 amended and renumbered effective January 1, 2008; adopted as rule 12.16.5 effective May 19, 1998; previously amended effective July 1, 1999.

Rule 7.540. Service on beneficiaries when power sought is not conferred

When the trustee seeks instructions to exercise a power not conferred by the will, a copy of the petition must be served by mail on all beneficiaries.

Rule 7.540 amended and renumbered effective January 1, 2008; adopted as rule 12.16.7 effective May 19, 1998; previously amended effective July 1, 1999.

Rule 7.550. Bond for trustee

Trustees appointed by the court are subject to the same rules as personal representatives pertaining to the posting of bond.

Rule 7.550 amended and renumbered effective January 1, 2008; adopted as rule 12.16.9.1 effective May 19, 1998; previously amended July 1, 1999 and January 1, 2002.

Chapter 20. [Reserved]

Chapter 21. Guardianships

Rule 7.710. Notice to parties in related actions

Notice of the petition to appoint a guardian must be given to persons not otherwise entitled to notice who are parties to any other proceeding to appoint a guardian for the minor if such proceedings are known to the petitioner at the time of filing.

Rule 7.710 amended and renumbered effective January 1, 2008; adopted as rule 12.14.1.3 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

Rule 7.720. Appearance of proposed guardian and minor

The proposed guardian and the proposed ward, if he or she is 12 years old or older, must attend the hearing to establish a guardianship of a minor unless the court excuses the appearance of the proposed ward for good cause. The court may require the appearance of a proposed ward who is under 12 if the court determines it is in the proposed ward's best interest to attend the hearing.

Rule 7.720 amended and renumbered effective January 1, 2008; adopted as rule 12.14.1.11 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

Rule 7.730. Waiver of court investigator fee

No court investigator fee will be imposed in any case in which a fee waiver has been approved by the court.

Rule 7.730 amended and renumbered effective January 1, 2008; adopted as rule 12.14.3.5 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

Rule 7.740. Notice of hearings on petitions for temporary guardianship

(a) Notice of hearings on petitions for temporary guardianships

If the court determines that a hearing on the petition for a temporary guardianship is necessary, the court will send notice to the attorney and petitioner. The attorney or the petitioner must serve a copy of the notice on those required to receive notice and file proof of service with the court.

(b) Notice of hearing following grant of ex parte application for temporary guardianship

If the request for a temporary guardianship is granted following review of an ex parte application and a hearing on the permanent guardianship is more than 30 days away, a hearing to reconsider the temporary guardianship will be set by the court and notice provided to the attorney or the petitioner. The attorney or the petitioner must serve a copy of the notice on those required to receive notice and file proof of service with the court.

Rule 7.740 amended and renumbered effective January 1, 2008; adopted as rule 12.14.4.1 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

Rule 7.750. Inventory and appraisal required

An inventory must be filed in all cases where there is a guardianship of the estate, even in a case where relief from the requirement of filing accountings may be sought under Probate Code section 2628. When assets are not in the possession of the guardian, the inventory must state who has possession of the assets.

Rule 7.750 amended and renumbered effective January 1, 2008; adopted as rule 12.14.7.1 effective May 19, 1998.

Rule 7.760. Contents of inventories in no or cash-only asset cases

(a) No asset or cash-only asset estates

When there are no assets or the assets are entirely cash, the inventory need not be submitted to a referee for appraisal. However, it must be filed with the court.

(b) Public benefit estates

If the ward receives Veterans, Social Security, Temporary Aid to Needy Families, or other periodic benefits, the inventory must indicate the amount received each month and the date when payments commenced.

Rule 7.760 amended and renumbered effective January 1, 2008; adopted as rules 12.14.7.3 and 12.14.7.4 effective May 19, 1998.

Rule 7.780. Accounts in guardianship proceedings

(a) Frequency of accounts

- (1) Guardianship accounts must be filed after the first anniversary of the establishment of the guardianship and biennially thereafter. The account must be filed within 60 days after the anniversary date.
- (2) Successor guardians must file an accounting one-year after the successor appointment date and biennially thereafter.

(b) Presence of ward necessary if final account waived

The court ordinarily will not approve a ward's waiver of the final account unless the ward is present at the time of hearing and competent to answer questions by the court.

(c) Reports accompanying accounts

In addition to the contents required by Probate Code section 1064, the report accompanying an account must contain the following:

- (1) A statement of the age, health, and the present address of the ward;
- (2) If income-producing property is inventoried in the guardianship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;
- (3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a guardian or the processing of any documents related to a guardian;
- (4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a guardian or any processing of any documents related to a guardian;
- (5) Whether the guardian, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and
- (6) Whether the guardian has sold, leased, or rented any real or personal property to any person with whom the guardian has a family or affiliate relationship as defined in Probate Code section 2359, subdivision (c)(2) and Probate Code section 2403, subdivision (c)(2).

Rule 7.780 amended and renumbered effective January 1, 2008; adopted as rule 12.14.8 effective May 19, 1998; previously amended July 1, 1999, January 1, 2002, July 1, 2002, and January 1, 2004.

Rule 7.790. Requirements if use of estate is sought to support ward

(a) Disclosure of benefits

If the minor's parent or parents are deceased, the guardian must disclose whether the minor is receiving Social Security or other survivor benefits, the amount of the benefits, why the benefits are inadequate to support the

minor and why it is in the best interests of the minor to use the estate for the minor's care and support.

(b) Explanation of parent's inability to support ward

The petition for authority to expend funds for support must contain a detailed explanation, including financial statements, of the parent's inability to support the child. If the petition does not contain the required detailed statement, the parent or guardian must be present at the hearing to give testimony.

(c) Requirement for request for compensation

The petition for compensation must be accompanied by a declaration setting forth the hours spent, the services performed by the guardian and the attorney, and the hourly rate of each person providing those services.

Rule 7.790 amended and renumbered effective January 1, 2008; adopted as rule 12.14.9 effective May 19, 1998; previously amended January 1, 2004.

Chapter 22. Conservatorships

Rule 7.800. Hearing on the petition for appointment

Upon filing of a petition for appointment of a conservator, the clerk will set the matter for hearing and issue a citation. If service of the citation is incomplete on the return date, it cannot be perfected by continuance and completion of service except by issuance of an amended citation. In such circumstances the original citation must be filed showing no service. Service of a citation will not ordinarily be waived.

Rule 7.800 amended and renumbered effective January 1, 2008; adopted as rule 12.15.1.2 effective May 19, 1998; previously amended January 1, 2004.

Rule 7.810. General plan

Within 90 days of appointment by the court, the conservator must file a general plan for the care, custody, and control of the conservatee, which must include a plan for meeting the financial needs of the conservatee, and serve it on the conservatee, any attorney for the conservatee, the Court Investigator's Office, and any person requesting special notice.

Rule 7.810 reenacted and renumbered effective July 1, 2008; adopted as rule 12.15.7 effective May 19, 1998; previously amended July 1, 1999; repealed effective January 1, 2008.

Rule 7.820. Appointment of legal counsel for conservatees and proposed conservatees

- (1) The court will appoint the Alameda County Public Defender as legal counsel if the conservatee or proposed conservatee is developmentally disabled or indigent.
- (2) The court will appoint Legal Assistance for Seniors as legal counsel if the conservatee or proposed conservatee is neither developmentally disabled nor indigent.
- (3) When a conservatee or proposed conservatee has independently retained legal counsel then the representation is subject to court approval.

Rule 7.820 reenacted and renumbered effective July 1, 2008; adopted as rule 12.15.17 effective May 19, 1998; previously amended January 1, 2002; repealed effective January 1, 2008.

Rule 7.830. Payment of court investigator fees

The following provisions govern payment of court investigator fees.

(a) Time for paying assessments

Court investigator assessments for reports must be paid before the hearing on the general plan. All other assessments must be paid before approval of the next accounting. The Court Investigator's Office will bill the estate or, where applicable, any trust of which the conservatee is a beneficiary.

(b) Conservator required to provide address

The conservator must provide the Court Investigator's Office with the current address of the trustee of any trust of which the conservatee is a beneficiary.

Rule 7.830 amended and renumbered effective January 1, 2008; adopted as rule 12.15.3.6 effective May 19, 1998; previously amended July 1, 1999, January 1, 2004.

Rule 7.840. Disclosure of benefits received

If the conservatee receives Veterans, Social Security, Temporary Aid to Needy Families, or other periodic benefits, the inventory must indicate the amount each month and the date when payments commenced.

Rule 7.840 amended and renumbered effective January 1, 2008; adopted as rule 12.15.7.6 effective May 19, 1998; previously amended July 1, 1999.

Rule 7.860. Reports accompanying accounts

In addition to the contents required by Probate Code section 1064, the report accompanying an account must contain the following:

- (1) The present address of the conservatee;
- (2) If income-producing property is inventoried in the conservatorship and the account fails to indicate that income is being produced by the property, an explanation must appear in the report;
- (3) Whether any real property has been rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or the processing of any documents related to a conservator;
- (4) Whether any personal property has been sold at a private sale, rented or leased to any court employee, or any person related by blood or marriage to a court employee, who has duties or responsibilities related to the appointment of a conservator or any processing of any documents related to a conservator;
- (5) Whether the conservator, in exercising his or her duties, has hired or referred any business to an entity in which he or she has a financial interest as defined in Probate Code section 2351, subdivision (d) or Probate Code section 2401, subdivision (c); and
- (6) Whether the conservator has sold, leased, or rented any real or personal property to any person with whom the conservator has a family or affiliate relationship as defined in Probate Code section 2359, subdivision (c)(2) and Probate Code section 2403, subdivision (c)(2).

Rule 7.860 amended and renumbered effective January 1, 2008; adopted as rules 12.15.8.1 and 12.15.8.3 effective May 19, 1998; previously amended January 1, 2002 and July 1, 2002.

Rule 7.870. Status report required

The conservator must submit a status report in all conservatorship matters of the person or person and estate at the time and in the form directed by the Court Investigator's Office.

Rule 7.870 amended and renumbered effective January 1, 2008; adopted as rule 12.15.8.4 effective May 19, 1998; previously amended January 1, 2002 and July 1, 2002.

Rule 7.880. Bond required

The court will not waive bond for an individual conservator of a conservatorship estate.

Rule 7.880 amended and renumbered effective January 1, 2008; adopted as rule 12.15.11.1 effective May 19, 1998.

Rule 7.895. Additional contents for petitions filed by private professional conservators

(a) Registration information required

Any petition to appoint a conservator filed by a private professional conservator must include his or her Alameda County and State of California registration numbers and the date he or she registered. No petition by a private professional conservator will be heard unless he or she is currently registered with both the county and the state. Proof of compliance with the statewide registry must be submitted to the Court Investigator's Office. Any private professional conservator must comply with all California state licensing requirements before he or she can be appointed in Alameda County.

(b) Disclosure of other proceedings required

The petitioner must disclose, by separate declaration, any proceedings, pending or concluded in Alameda County or any other jurisdiction, where orders have been issued or are sought to be issued which in any way affect the ward or conservatee that is the subject of the proceedings in Alameda County.

Rule 7.895 amended and renumbered effective January 1, 2008; adopted as rule 12.15.18 effective May 19, 1998.