

**DIVISION VII: PROBATE**

**CHAPTER 12 - PROBATE COURT PROCEEDINGS**

All of the provisions of this Chapter 12 relating to Probate Court Proceedings apply to all probate matters heard in Oakland, Hayward, Fremont, and Pleasanton, unless indicated to the contrary. *(Effective 5/19/98; Amended 7/1/99, 01/01/02, and 1/1/04)*

**RULE 12.1 GENERAL PROCEDURAL GUIDE**

**RULE 12.1.1 PROBATE CALENDARS**

**12.1.1.1**

Please refer to "Attachment A" for a list of current courtroom assignments for the departments designated to hear probate matters and the days and times that the calendars are heard.

**RULE 12.1.1.2 SPECIAL SETTINGS**

In order to place a matter for hearing on a calendar which is already full, an ex parte petition must be submitted to the Court. Only emergency situations will be considered for such special placement. The petition should be submitted to the clerk of the appropriate branch court which specifies the facts necessitating an early hearing date.

*(Effective 5/19/98)*

**RULE 12.1.2 VENUE**

**RULE 12.1.2.1 PROBATE ESTATES**

The proper division of the Alameda County Superior Court for all proceedings concerning the administration of a decedent's estate is the judicial district in which the decedent was domiciled, regardless of where the decedent died. If the decedent was a non-resident of California, then the proper branch is the judicial district where the decedent left real property. The geographical limits of the Court's locations are described in the Appendix.

**RULE 12.1.2.2 TRUSTS**

The proper venue for all proceedings concerning a trust is the location of the Alameda County Superior Court within whose geographical limits the trust is administered. The geographical limits of the Court's locations are described in the Appendix.

**RULE 12.1.2.3 GUARDIANSHIPS AND CONSERVATORSHIPS**

The proper branch of the Alameda County Superior Court for all proceedings concerning a guardianship or conservatorship or any related matter shall ordinarily be the judicial district in which the minor or proposed conservatee is domiciled, or, if a non-resident of California, then the judicial district in which the minor or proposed conservatee is temporarily residing. However, the Court may determine at the time of the initial hearing that it is in the best interests of the minor or

the proposed conservatee to transfer further proceedings to a different location. The geographical limits of the Court's locations are described in the Appendix.

**RULE 12.1.2.4 CORRECT LOCATION OF THE COURT**

If the matter is calendared in the wrong location of the Court, it will be transferred on the Court's own motion to the correct location of the Court.

**12.1.2.5**

All cases in which the Public Guardian or Public Administrator is appointed shall be transferred to Oakland.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.1.3 STIPULATION TO COURT COMMISSIONER**

Probate matters are occasionally heard in Alameda County by a Superior Court Commissioner, who is a member of the State Bar of California and who has been appointed as a Superior Court Commissioner in accordance with Article 6, Section 22, of the Constitution of this State. In addition, all Alameda County Commissioners have been appointed as Temporary Judges pursuant to an order of the Presiding Judge of this Court under the authority of Article 6, Section 22, of the Constitution of this State and Subdivision (5) of the Code of Civil Procedure Section 259. Upon such appointment, each Commissioner has taken the oath of office as to all matters assigned.

All parties and their attorneys are deemed to have stipulated to any Commissioner or pro tem judge of the Alameda County Superior Court hearing any matter on the probate calendar as a Temporary Judge until the final determination of the matter, unless a written or oral objection is made in open Court prior to the commencement of the first hearing on the matter. *(Effective 5/19/98)*

**RULE 12.1.4 COURTROOM PROCEDURE**

**12.1.4.1**

Fill out a witness slip and present it to the clerk before the calendar is called. Give a business card to the court reporter.

**12.1.4.2**

Do not disturb the courtroom clerk while the calendar is being called. Questions may be directed to the courtroom clerk before or after court is in session.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.1.5 PRE-GRANTED PROCEDURES**

**12.1.5.1**

Matters appearing on the GENERAL CALENDAR (excluding sales) will be reviewed by the probate examiners and may be "pre-granted" unless written objections are filed, oral

objections are made in open Court, or the attorney is advised by the examiners of outstanding procedural defects or other circumstances which need to be resolved before the order can be granted.

**12.1.5.2**

To qualify for "pre-grant" status, all supporting documents and a proposed order must be submitted to the Probate Examiners at least five (5) court days before the calendared hearing.

**12.1.5.3**

"Pre-granted" matters are announced to the public as set forth in the appendix.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.1.6 MATTERS REMOVED FROM PRE-GRANT STATUS**

**12.1.6.1**

The list of pre-granted matters is read at the beginning of each GENERAL calendar. If an objector or counsel for an objector to a pre-granted matter appears at the hearing, the Court ordinarily will remove the case from the pre-granted list and allow a continuance of at least three (3) weeks. The Court may direct the objector to file written objections or an opposing petition by the continuance date or some other designated date in order for the objections to be heard. An appearance fee by the objector will be required by the Executive Officer/Clerk's Office prior to the filing of any documents and the hearing on the contested matter.

**12.1.6.2**

If the attorney of record on the pre-granted matter is not present, the courtroom clerk ordinarily will advise the attorney of the reason for the continuance.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.1.7 CONTINUANCES**

**12.1.7.1**

- A.** A continuance can be requested in two ways:
  - 1.** By oral or written request submitted to the Probate Clerk by 12:00 noon on the court day prior to the hearing: Oakland- ((510) 272-6003), Fremont – ((510) 795-2388), Hayward - ((510) 690- 2700) and Pleasanton - ((925) 227-6700); or
  - 2.** By oral or written request made in open court at the hearing.
- B.** In any case where the Alameda County Counsel or the Alameda County Public Defender or other counsel has made an appearance or has been appointed, the party requesting a continuance under these rules must obtain the prior agreement of the Alameda County Counsel or the Alameda County Public Defender or other counsel to the proposed continuance date before requesting a continuance under Rule 12.1.7.1.

**12.1.7.2**

Once requested, a continuance can be granted only by the Court. A request under 12.1.7.1(b) above will be either granted or denied at the hearing. A request under 12.1.7.1(a) above will be acted on as soon as reasonably possible after received by the Clerk, and the grant or denial of such request will be announced on the taped telephone message which plays on the day prior to the hearing.

**12.1.7.3**

If a written or oral request under 12.1.7.1(a) above is not granted prior to the hearing, counsel must appear at the hearing and be prepared to proceed with the case on the merits. Failure to appear ordinarily means the matter will be dropped from the calendar; in addition, the court has discretion to apply other appropriate sanctions (e.g., issuance of a citation).

**12.1.7.4**

A continuance will be granted only upon a showing of "good cause." Ordinarily, "good cause" will be presumed for the first request for a continuance.

*(Effective 5/19/98; Amended 7/1/99, 1/1/04 and 1/1/07)*

**RULE 12.1.8 COURT APPEARANCES BY ATTORNEY**

**12.1.8.1**

No appearance will be required in pre-granted matters.

**12.1.8.2**

An appearance is required on the hearing of matters which are not pre-granted or continued on the tape-recorded telephone message. Except in petitions to appoint a conservator or guardian, telephone appearance are allowed in matters where the attorney or party is more than 50 miles away. An "Appearance by Phone <sup>TM</sup>" Service Request Form is available from the Court. Refer to the Appendix for the conference call service toll free telephone number.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.1.9 TELEPHONE CALLS TO THE PROBATE DEPARTMENT**

See Appendix regarding telephone calls to the Probate Examiners to discuss notes in the files.

Also See Appendix regarding calls being made to the various Probate Department courtroom clerks. *(Effective 5/19/98)*

**RULE 12.1.10 FORM OF PAPERS PRESENTED FOR FILING**

**12.1.10.1**

It is the duty of the attorney (or the party appearing without an attorney) to prepare and submit the supporting documents and proposed orders for all matters. All such documents shall include the time and date of the hearing typed under the caption on the front page.

**12.1.10.2**

Only current Judicial Council forms, authorized Alameda County Probate forms or pleadings typed on original pleading paper in compliance with the Rules of Court, above, are acceptable for filing. The Court will not accept preprinted forms prepared by any continuing education programs, stationery stores, other jurisdictions or other unauthorized entities.

**12.1.10.3**

In all cases where specific Judicial Council forms are available, the Court requires use of such forms rather than original pleadings prepared by counsel (or by a party without counsel).

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.1.11 AMENDMENT OF PLEADINGS**

**12.1.11.1**

Refer to California Rules of Court, Rule 3.1324(d), as adopted by the Judicial Council, which reads as follows: "An amendment shall not be made by alterations on the face of a pleading except by permission of the Court. All alterations shall be initialed by the court or clerk."

**12.1.11.2**

For Nunc Pro Tunc corrections see Rule 12.13.3.

*(Effective 5/19/98; Amended 1/1/07)*

**RULE 12.1.12 CONSOLIDATED WITH THE LOWEST NUMBER**

Whenever two or more petitions with different numbers have been filed with reference to the same decedent, conservator or ward, the Court will, on its own motion, consolidate all matters with the file bearing the lowest number. *(Effective 5/19/98)*

**RULE 12.1.13 DECLARATIONS UNDER PENALTY OF PERJURY**

Code of Civil Procedure Section 2015.5 authorizes the use in California courts of unsworn, unnotarized declarations signed anywhere in the world if the paper recites that the matter stated is true under penalty of perjury "under the laws of the State of California." If the document is executed in California, it should so state. However, if the quoted words are used, the document need not show where it was executed although the date of execution must be

stated. Many standard Judicial Council forms must be adapted to conform to this rule if the declarant is not within California. *(Effective 5/19/98)*

**RULE 12.1.14 SUBSTITUTION OR WITHDRAWAL OF ATTORNEY**

Before substitution of the attorney of record will have force:

**12.1.14.1**

The attorney substituted out, the new attorney and the personal representative, conservator, guardian, or fiduciary all must execute a document of substitution; or

**12.1.14.2**

The Court must approve the attorney's release if no new attorney is substituted by noticed hearing.

**12.1.14.3**

Motions to withdraw as attorney of record in probate proceedings must be heard in the Probate Department (Refer to California Rule of Court 376; Code of Civil Procedure Section 284).

*(Effective 5/19/98)*

**RULE 12.1.15 PROCEDURE FOR EX PARTE MATTERS**

See Appendix for locations where ex parte petitions are to be presented.

**12.1.15.1**

If the ex parte matter is contested the petition shall so specify. If necessary, the clerk will contact the attorney of record so the matter can be added to the next available calendar for hearing.

**12.1.15.2**

Ex parte orders will not be granted unless special notice is waived:

1. All applications for ex parte orders must contain a list of any and all requests for special notice which have been filed in the proceedings or contain an allegation that no special notice has been requested. If any such notice has been requested, a waiver must accompany the petition.

2. If it is reasonably likely there will be a dispute or contest as evidenced by documents on file in the proceeding, then all parties must be notified at least 48 hours in advance of the time and place where the application for the ex parte order will be made. Proof by the attorney's declaration of such notification shall accompany the petition.

**12.1.15.3**

For good cause, the Court may require a noticed hearing before approval of any matter. An ex parte matter will only be considered if there is an affirmative factual showing of an emergency, irreparable harm, immediate danger, or any other statutory basis for granting ex parte relief.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.1.16 FAILURE OF FIDUCIARY TO TAKE TIMELY ACTION**

Not infrequently an executor, administrator, guardian, conservator or trustee will fail to take timely action with respect to the filing of an accounting, the filing of an inventory, etc. If such failure is called to the attention of the Court, the Court may send a letter directly to the fiduciary requesting that action be taken within a specified period of time. If action is not taken within the prescribed time, the Court will ordinarily issue a citation requiring the fiduciary and attorney to appear and explain why the action has not been taken. A surcharge may be imposed for unreasonable delay, other remedies under Probate Code Sections 12200 et seq. as appropriate may be applied, or the personal representative may be removed for failure to perform fiduciary duties in a timely and responsible manner. *(Effective 5/19/98)*

**RULE 12.2 APPOINTMENT OF PERSONAL REPRESENTATIVES**

**RULE 12.2.1 SPECIAL LETTERS**

**12.2.1.1**

Petitions for special letters of administration will not ordinarily be granted on less than forty-eight (48) hours notice to all persons who are equitably entitled to notice.

**12.2.1.2**

The petition should state the facts necessitating the appointment of a special administrator (e.g., initiation or continuance of litigation, preservation of property subject to loss or damage, or other emergency).

**12.2.1.3**

Special letters are not ordinarily appropriate in wrongful death situations. (See Rule 12.13.4.)

**12.2.1.4**

Powers under The Independent Administration of Estates Act may be granted to a special administrator who has been granted general powers.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.2.2 PROOF OF WILLS**

**12.2.2.1 Filing of Will**

If available, the original will and any codicil(s) should be deposited with the Executive Officer/Clerk's Office at the time of filing the petition for probate of will, or in any event no later than thirty (30) days after the person having custody of the will acquires knowledge of the death of the testator. If the original documents are not available:

1. If the will or a codicil is in the custody of a person who refuses to produce it, the petition should seek an Order to Produce Will (Probate Code Section 8201);
2. If the will or a codicil is lost, the petition should so allege and the written statement specified in Probate Code Section 8223 should be attached. A copy of the lost will shall be filed in the Executive Officer/Clerks Office for filing in lieu of the original will;
3. If the original will or a codicil is detained in a court of another state or country and cannot be produced for probate, a certified photographic copy may be admitted to probate. A copy of the will should be attached to the petition (Probate Code Section 8202).

#### **RULE 12.2.2.2 PROOF OF UNCONTESTED WITNESSED WILLS/CODICILS**

1. If the original will or codicil is on file and is "self-proving" (i.e., the will or codicil contains an affidavit or declaration that includes or incorporates the attestation clause which evidences that the will or codicil was executed in all particulars as required by law), the Court may admit the will or codicil to probate without further proof (Probate Code Section 8220) if there have been no alterations made to the will or codicil. If any alterations appear, additional evidence may be required to prove when the alterations were made and whether they are valid.
2. If the will or codicil is not self-proving, a separate affidavit of subscribing witness (applicable Judicial Council form of Proof of Subscribing Witness), with photocopy of the will or codicil attached, should be completed and filed prior to the hearing on the petition.

#### **RULE 12.2.2.3 PROOF OF UNCONTESTED HOLOGRAPHIC WILL/CODICIL**

A separate Judicial Council form of Proof of Holographic Instrument (with photocopy and typewritten copy of the will or codicil attached) should be completed and filed prior to the hearing on the petition.

#### **RULE 12.2.2.4 COPY OF WILL/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.

*(Effective 5/19/98)*

#### **RULE 12.2.3 PUBLICATION**

##### **12.2.3.1**

The published Notice of Petition to Administer Estate under Probate Code Section 8100 is sufficient to include all instruments which are offered for probate and specifically referred to in the petition for which the notice is published. Any other wills or codicils not specifically mentioned in said petition must be presented to the Court by way of an amended petition or a second petition, and a new notice thereon must be published.

##### **12.2.3.2**

Counsel are advised that re-publication of the Notice of Petition to Administer Estate in the form set forth in Probate Code Section 8100 is required in cases where the original petition

for probate has been dropped for failure to appear. In order to avoid this situation, counsel may request a continuance in the appropriate circumstances or appear at the hearing.

*(Effective 5/19/98)*

## **RULE 12.2.4 NOTICE BY MAIL**

### **12.2.4.1**

Probate Code Sections 8110 et seq. require that the petitioner cause fifteen (15) days notice of hearing on petitions for administration of a decedent's estate to be served by mail or by personal delivery on all heirs, all devisees, including all contingent beneficiaries, and any executors nominated in the will. The form of the notice is specified in Probate Code Section 8100, which form is reproduced on Judicial Council form DE 121 ("Notice of Petition to Administer Estate").

### **12.2.4.2**

The petitioner is responsible for giving notices required by law, and is not relieved of that responsibility by the custom in Alameda County for some newspapers to attend to the mailing of the notices in certain matters.

### **12.2.4.3**

A declaration of due diligence is required where the petitioner cannot reasonably determine the name or address of an heir or beneficiary to whom notice must be given. The declaration must specify all efforts undertaken to identify and locate such heir or beneficiary. The petitioner should check the following and state the results in the declaration: Telephone directory, directory assistance, relatives and friends, former employers, and last known address. At the time of the hearing, the petitioner should present an Order Dispensing Notice to be signed by the Court if the search efforts are unsuccessful. The meaning of a reasonable effort will depend on the facts and circumstances of a particular case, including the cost of the search and the potential interest of the person to whom notice should be given.

*(Effective 5/19/98; Amended 1/1/04)*

## **RULE 12.2.5 GRANTING OF LETTERS PURSUANT TO VARIOUS FORMS OF PETITION**

The following requirements will be observed in connection with petitions for letters:

### **12.2.5.1**

If a petition is filed for probate of a will and letters of administration with the will annexed, and the will is denied probate, letters of administration may be granted on the same petition.

**12.2.5.2**

If a petition is filed for probate of a will and for letters of administration with the will annexed and the Court finds that the petitioner was named in the will as an executor, letters testamentary may be granted on the same petition.

**12.2.5.3**

If a petition is filed and the Court determines that the letters testamentary or of administration cannot be issued without further hearing, letters of special administration may, in the discretion of the Court, be granted on the same petition. Otherwise, the Court may require a new petition to be presented pursuant to Rule 12.2.1.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.2.6 STATEMENT OF ADDRESS OF NON-RESIDENT PERSONAL REPRESENTATIVE**

If the personal representative resides outside the State of California, prior to the issuance of letters, a statement under penalty of perjury must be filed setting forth the personal representative's permanent address (Probate Code Section 8573). To minimize the delay in the issuance of letters, it is recommended that the statement be submitted with the proposed order prior to the hearing (Refer to Rule 12.5.5 regarding bond requirements for non-resident personal representatives). *(Effective 5/19/98)*

**RULE 12.2.7 PETITION FOR POWERS UNDER INDEPENDENT ADMINISTRATION OF ESTATES ACT**

**12.2.7.1**

Representatives subject to a bonding requirement who are not intending to act under the Independent Administration of Estates Act to sell or exchange real property, to grant options to purchase real property, or to borrow money with the loan to be secured by an encumbrance on real property should request limited powers. Otherwise, a higher bond shall be fixed at time of appointment, pursuant to Probate Code Section 10453, i.e., to include the estimated net proceeds from the sale of the real property in addition to the value of the personal property and the annual income from all sources. *(Effective 5/19/98)*

**RULE 12.2.8 DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE**

Duties and Liabilities of Personal Representative (Judicial Council Form DE-147) needs to be filed in advance of the appointment of the personal representative. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.3 DETERMINATION OR CONFIRMATION OF PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE**

**RULE 12.3.1 NOTICE**

Notice requirements will depend on whether or not the spousal property petition is filed with a petition for probate of the deceased spouse's will or administration of the deceased spouse's estate (See Probate Code Section 13655.) (*Effective 5/19/98*)

**RULE 12.3.2 ALLEGATIONS IN SUPPORT OF SHOWING OF COMMUNITY PROPERTY, WHERE NECESSARY**

**12.3.2.1**

If the Will leaves the property sought to be confirmed outright to the surviving spouse, no allegations as to the character of the property are necessary.

**12.3.2.2**

In other circumstances, if there is a community property agreement, attach a copy to the petition. If the agreement covers all property sought to be set aside, no additional allegations are required.

**12.3.2.3**

If there is no community property agreement or if such an agreement does not cover all the property sought to be set aside, the petitioner should allege facts sufficient to show that the property is community property, including:

1. Date and place of marriage.
2. The decedent's net worth at time of marriage.
3. Whether or not the decedent received any significant gifts or inheritance after marriage.
4. Facts to show that the property to be set aside is not traceable to such initial net worth or later gift or inheritance.

**12.3.2.4**

If the decedent and surviving spouse were married outside California or lived outside California during the marriage, the same showing as required in Rule 12.3.2.3 above must be made respecting the decedent's net worth at the time of entry or each re-entry into California.

*(Effective 5/19/98)*

**RULE 12.3.3 VALUATION OF ASSETS**

Filing of an inventory and appraisalment is optional under Probate Code Section 13659, unless required by the Court in order to protect the interests of creditors under Probate Code Section 13658. (*Effective 5/19/98*)

**RULE 12.3.4 ATTORNEYS' FEES IN SPOUSAL PROPERTY PROCEEDINGS**

Attorneys' fees in spousal property proceedings are not set by the Court unless there is a dispute concerning the reasonableness of the fees. Probate Code Section 13660 (See Rule 12.10 for general standards concerning reasonableness of attorneys' fees, and Rule 12.10.11 regarding determination of the fees in spousal property proceedings). *(Effective 5/19/98)*

**RULE 12.3.5 CHARACTERIZATION OF MARITAL PROPERTY**

If the property is held in joint tenancy form, or in the sole name of the decedent, the factual allegations set forth in Rule 12.3.2.3 above may not alone be sufficient to establish the character of the property as community. Counsel are advised to review Family Code Section 760 et seq. regarding characterization of marital property. *(Effective 5/19/98)*

**RULE 12.4 INDEPENDENT ADMINISTRATION OF ESTATES**

**RULE 12.4.1 STATUTORY REQUIREMENTS**

**12.4.1.1**

Petitioners may decline to seek independent powers, seek full powers, or seek limited powers. Under "limited powers," the petitioner has no independent authority to sell or exchange real property, to grant options to purchase real property, or to borrow money with the loan secured by an encumbrance on real property (See Probate Code Section 10403).

**12.4.1.2**

If full powers are sought and bond has not been waived, ordinarily bond will be required for the full value of the property less encumbrances (Probate Code Section 10453. Also see Rule 12.8.2).

**RULE 12.4.2 USE OF INDEPENDENT ADMINISTRATION OF ESTATES ACT**

The Court encourages personal representatives to use the authority given under The Independent Administration of Estates Act to handle appropriate routine actions. However, such policy is not intended to discourage the personal representative from using a noticed hearing procedure if desirable (See Probate Code Section 10500).

**RULE 12.4.3 FINAL REPORT**

If a personal representative has proceeded under The Independent Administration of Estates Act, the final report, whether or not accompanied by an accounting, must list and describe all independent acts taken without prior Court approval if notice of the proposed action was required. The petition must contain an allegation that the period for the notice of proposed action was met or waived and that no objections were received.

*(Effective 5/19/98)*

## **RULE 12.5 BOND OF PERSONAL REPRESENTATIVE**

### **RULE 12.5.1 AMOUNT OF BOND**

#### **12.5.1.1**

Unless the requirements of Probate Code Section 8481 are met, a bond will be required of every person appointed as a personal representative. As a general policy, the Court will require at least a \$10,000 minimum bond even if the value of the estate is less than \$10,000.

#### **12.5.1.2**

A petition to appoint a personal representative should set forth the estimated value of real property, personal property, and the estimated annual income from all property.

#### **12.5.1.3**

If the estimated value of the assets of the estate is not known at the time of the filing of the petition for appointment, ordinarily the personal representative must appear at the hearing to testify as to the estimated value of estate assets.

#### **12.5.1.4**

If written waivers are attached to the petition, bond will ordinarily be waived by the Court pursuant to Probate Code Section 8481, provided all heirs or beneficiaries are competent to act. If any such persons are incompetent (e.g., minors), an appropriate representative must waive bond on their behalf (But see Rule 12.5.5 re non-resident personal representative).

#### **12.5.1.5**

See Rule 12.4.1.2 and Rule 12.8.2.2 if the personal representative subject to a bonding requirement intends to sell real property pursuant to The Independent Administration of Estates Act (Also see Probate Code Section 10453).

*(Effective 5/19/98; Amended 1/1/04)*

### **RULE 12.5.2 METHODS OF REDUCING BOND**

#### **12.5.2.1**

There are three basic methods for obtaining a reduction of bond.

1. The first is to deposit or invest a specified amount of assets before the order of appointment is made, obtain a receipt and agreement to hold the assets in a blocked account, and offer the receipt and agreement in evidence when the petition for appointment comes on for hearing. The facts upon which the reduced bond is sought should be set forth, either in the original petition for appointment or in a separate petition to be heard simultaneously.
2. The second is to obtain in the order appointing the representative, a provision that if assets are deposited or invested in blocked accounts the bond may be fixed in a reduced amount.

A receipt for the deposit must be obtained by the depository and filed with the clerk. The clerk is then authorized to issue letters upon the filing of a bond in the reduced amount.

3. The third is to obtain a reduction of bond after the representative has qualified and entered upon the administration of the estate. If a deposit and reduction in the amount of the bond is anticipated, this may be covered in the original order of appointment; if not, a subsequent petition should be filed. It is often convenient to present this petition with the first annual account. Petitions to decrease bond are subject to a hearing with notice given to all heirs or beneficiaries.

#### **12.5.2.2**

If a bond must be increased, see Rule 12.6.6.2 for the appropriate procedure.

*(Effective 5/19/98)*

#### **RULE 12.5.3 LIMITATION OF AMOUNT ON DEPOSIT WITH ONE FINANCIAL INSTITUTION**

Monies in blocked accounts should not exceed the limit of Federal Deposit Insurance Corporation insurance for each individual bank or savings and loan association. The attorney shall immediately file an ex parte petition for an order authorizing establishment of additional blocked accounts into which funds exceeding the insurance limit shall be deposited. *(Effective 5/19/98)*

#### **RULE 12.5.4 CORPORATE AND INDIVIDUAL EXECUTORS**

A corporate executor cannot assume responsibility for the acts of individual co-executors. Individual executors must provide bond as required by law. If a deposit is made under the provisions of Probate Code Section 8483 to reduce bond, it must be made jointly by the corporate and individual co-executors. *(Effective 5/19/98)*

#### **RULE 12.5.5 BOND OF NONRESIDENT PERSONAL REPRESENTATIVE**

A personal representative who is a nonresident of California and who is nominated to serve without bond may nevertheless be required to post such bond as the Court may require. Ordinarily, the amount of the bond will be the minimum bond in effect in Alameda County which is currently \$10,000. However, in the Court's discretion, the maximum amount may be imposed, which is the value of the personal and real property, plus the amount of estimated income for one year for both the personal and real property. (See Rule 12.5.1) This rule applies even if there are co-executors and one or more are California residents. In the case of a personal representative who is also the sole beneficiary, the same rule applies for the protection of potential creditors. *(Effective 5/19/98)*

#### **RULE 12.5.6 MULTIPLE REPRESENTATIVES**

When multiple representatives are appointed by an order which directs that "letters shall issue to them," the clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be so provided in the order of appointment. *(Effective 5/19/98)*

**RULE 12.5.7 DISTRIBUTEES BOND**

This Rule 12.5 addresses the bond required by a personal representative to administer an estate. In certain circumstances, such as a preliminary distribution, a bond may be required of the distributee (See Probate Code Section 11622). *(Effective 5/19/98)*

**RULE 12.6 INVENTORY AND APPRAISAL**

**RULE 12.6.1 REQUEST FOR APPOINTMENT OF PROBATE REFEREE**

Appointment of a probate referee is requested by checking the appropriate box on the proposed Order for Probate or an ex parte order to appoint a probate referee may be used.

When appointment of a probate referee is not requested in an estate with assets requiring appraisal, before final distribution will be ordered, counsel must follow the procedure defined in this rule for waiver of the appointment of a referee. *(Effective 5/19/98)*

**RULE 12.6.2 WAIVER OF APPOINTMENT OF PROBATE REFEREE**

**12.6.2.1**

The petition for waiver of appointment of a probate referee should include the following:

1. A showing of "good cause" as required by Probate Code Section 8903(a), and as more particularly described below.
2. The qualifications of the person seeking to appraise the asset in question and, if applicable, the foundation for that person's determination of value.
3. If the determination of the value of any inventory item will affect the distribution to any person, other than the fiduciary, or if it is a significant item, and the determination of entitlement to fees depends upon its valuation, the Court ordinarily will require an additional showing of the basis for determination of value.

**12.6.2.2**

The Court does not favor the waiver of the Probate Referee's appraisal under Probate Code § 8903 in the absence of exceptional circumstances. The decision whether "good cause" exists will be made by the Court on the basis of the facts set forth in the petition.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.6.3 FILING INVENTORY AND APPRAISAL**

Upon the filing of the inventory and appraisal, one copy shall be provided to the clerk to transmit to the Assessor's Office. *(Effective 5/19/98)*

**RULE 12.6.4 DESCRIPTION OF PROPERTY IN INVENTORY AND APPRAISAL**

Property shall be described in the inventory and appraisal using the guidelines in the Probate Referee's Manual, a copy of which can be obtained from any probate referee. *(Effective 5/19/98)*

**RULE 12.6.5 WHEN DECEDENT IS SURVIVING JOINT TENANT**

**12.6.5.1**

When any assets of the estate stand in the name of the decedent and another person as joint tenants, or another person is designated as a "payable on death" beneficiary, and such person has predeceased the decedent and title has not been placed solely in the name of the decedent, the prior death of such person should be stated in the inventory and appraisal.

**12.6.5.2**

If a petition under Probate Code Sections 200 et seq. is filed to remove the name of such predeceased person from title to the property, such petition cannot be filed in the decedent's estate but rather must be filed in a separate proceeding under the name of the deceased person.

*(Effective 5/19/98)*

**RULE 12.6.6 INVENTORY AND APPRAISAL TO SHOW SUFFICIENCY OF BOND**

**12.6.6.1**

The attorney shall make a statement in the inventory and appraisal showing the amount of the bond filed, if any; whether bond has been waived; and whether the bond is sufficient or insufficient.

**12.6.6.2**

If the bond is insufficient, the attorney shall immediately file a petition and obtain an ex parte order increasing the bond to the amount required by the statute.

**12.6.6.3**

See Rule 5.2 for procedures for reduction of bond (which cannot be done ex parte and requires a noticed hearing).

**12.6.6.4**

A property tax certification (Probate Code § 8800d) must be filed at the time of filing the inventory.

*(Effective 5/19/98)*

**RULE 12.7 CREDITORS' CLAIMS**

**RULE 12.7.1 APPLICATION OF RULES ON CREDITORS' CLAIMS**

**12.7.1.1**

This Rule 12.7 applies to all creditors' claims whether arising out of an estate commenced before, on or after July 1, 1988, at which time substantive changes went into effect.

To the extent that these rules are impractical for estates commenced prior to July 1, 1988 where prior law continues to apply, the local probate rules in effect prior to July 1, 1988 continue to apply to estates commenced prior to July 1, 1988.

#### **12.7.1.2**

Counsel are advised to review the case of **Tulsa Professional Collection Services, Inc. v. Pope**, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988), which held that if the identity of a creditor was known or reasonably ascertainable, the personal representative was required to give notice to the creditor by mail. As a result of that decision, changes to the California statutory rules governing creditors' claims, Probate Code Sections 9000 et seq., have been made by the California Legislature.

*(Effective 5/19/98)*

### **RULE 12.7.2 NOTICE OF ADMINISTRATION TO CREDITOR**

The Notice of Administration specified in Probate Code Section 9052 may be filed with the Clerk of the Court with a completed proof of service attached. *(Effective 5/19/98)*

### **RULE 12.7.3 INDEPENDENT ADMINISTRATION OF ESTATES ACT**

A personal representative who has been granted authorization under the Independent Administration of Estates Act, Probate Code Sections 10400 et seq., may and ordinarily should act on creditors' claims without court approval, except with respect to claims of the personal representative and the attorney for the personal representative (Probate Code Section 10552). Presentation of ordinary and routine claims to the Court for approval results in an unnecessary expenditure of the Court's resources when authority for independent administration has been granted. *(Effective 5/19/98)*

### **RULE 12.7.4 COURT APPROVAL OF CLAIMS**

#### **12.7.4.1**

Where court approval of a claim is required or desired, counsel and claimants should review the creditors' claim carefully before submitting it to the Court. Particular attention should be given to ensure that (a) the claim has been filed with the court as required by Probate Code Section 9150(b), (b) all items on the creditors' claim are fully completed, and (c) all supporting documents attached. Counsel should ascertain that the claim is not for a debt, other than funeral expenses, which was incurred after the date of death.

#### **12.7.4.2**

To facilitate approval of creditors' claims by the Court, counsel should present the creditor's claim form and the accompanying allowance/ rejection form directly to the Probate Clerk in the Branch Courts (and not to the main Executive Officer/Clerk's Office).

#### **12.7.4.3**

Where the estate is insolvent, or under unusual or extraordinary circumstances, or upon request of any interested party, the Court in its discretion may require a noticed hearing pursuant

to the procedure set forth in Rule 12.7.6 and may examine the creditor and others under oath. Where the estate is solvent and all residuary beneficiaries are competent adults and consent to payment of a claim in writing, no hearing shall be required.

*(Effective 5/19/98; Amended 1/1/04)*

#### **RULE 12.7.5 QUESTIONABLE CLAIMS**

If the personal representative believes that payment of a claim may not be proper, the personal representative, in his or her discretion, may notice a hearing pursuant to the procedure set forth in the following Rule 12.7.6 or may, if the personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act, give Notice of Proposed Action pursuant to Probate Code Sections 10580 et seq., setting forth the action the personal representative proposes to take regarding payment of the claim. *(Effective 5/19/98)*

#### **RULE 12.7.6 CLAIMS OF THE PERSONAL REPRESENTATIVE AND HIS OR HER ATTORNEY**

Before approval of claims of the personal representative or the attorney for the personal representative, the Court may require a hearing under Probate Code Section 9252. A petition should be filed and notice of the hearing given pursuant to Probate Code Section 1220. A copy of the claim shall be attached to the petition as an exhibit. Ordinarily, the Court will not require a hearing under this rule when the claim is less than \$1,500. *(Effective 5/19/98)*

#### **RULE 12.7.7 FUNERAL CLAIMS**

An unusually large claim for the decedent's funeral and/or interment is a questionable claim and may be set for hearing pursuant to the procedure set forth in Rule 12.7.6 immediately above. Counsel is advised to review the case of **Estate of Malgor**, 77 Cal. App. 2d 535, 176 P.2d 66 (1947). Where appropriate, the personal representative should either include facts in the petition or file a separate declaration to justify an unusually large expenditure for funeral expenses by reason of the value of the estate and/or the standard of living adopted by the decedent during his lifetime. Interest will be allowed on creditors' claims for funeral expenses only as made payable by Health and Safety Code Section 7101. *(Effective 5/19/98)*

#### **RULE 12.7.8 INSOLVENT ESTATES**

##### **12.7.8.1**

Where it appears that the estate is insolvent, the personal representative must exercise caution in the payment of debts of the decedent. If an improper payment is made, the personal representative may be surcharged upon rendering the final account. Counsel should refer to Probate Section 11420 for the priority of creditors.

##### **12.7.8.2**

If any doubt exists as to the propriety of paying a given claim against an estate, the personal representative may file a petition for instructions and give notice of the hearing pursuant to Probate Code Section 1220.

*(Effective 5/19/98)*

**RULE 12.7.9 FAILURE TO ACT ON CLAIMS**

Particular attention is called to Probate Code Section 9256 which provides that the failure of a personal representative to act on a claim constitutes rejection of the claim only at the option of the claimant. The limitations provisions contained in Probate Code Section 9353 are not set into operation by the inaction of the personal representative. *(Effective 5/19/98)*

**RULE 12.7.10 DEBTS PAID WITHOUT VERIFIED CLAIMS**

Reimbursement for payment of debts of the decedent arising upon contract or for payment of funeral expenses of the decedent must be supported by verified claims or written demands for payment pursuant to Probate Code Section 9154 presented within the time allowed by law. The personal representative may pay debts where no verified claim has been submitted only where all of the factors specified in Probate Code Section 9154 have been met. This requirement applies as well to debts and funeral expenses paid by the personal representative from his or her own funds, where the personal representative seeks reimbursement for such payments. The personal representative may be reimbursed for payment of the decedent's debts and funeral expenses only upon the timely filing of a verified claim. *(Effective 5/19/98)*

**RULE 12.7.11 DISPUTED CLAIMS**

**12.7.11.1**

Where a civil action is pending on a rejected claim at the time of final distribution, the amount of the claims shall be paid into Court pursuant to Probate Code Section 11427.

**12.7.11.2**

The Court will not act on a claim rejected in whole or in part by the personal representative or on other disputed claims except pursuant to Probate Code Section 9254, which provides for contesting the validity of an allowed or approved claim, or pursuant to Section 9620 or Section 9621 which provides for the presentation of a written stipulation conforming to the applicable statute and executed by the personal representative of the estate and the claimant. The stipulation shall contain an enumeration of the issues to be resolved, including any special defenses. If the Court accepts the stipulation, the Clerk of the Court shall notify each party of the consent of the Court and of the time and place of hearing.

*(Effective 5/19/98)*

**RULE 12.8 SALES BY PERSONAL REPRESENTATIVES**

**RULE 12.8.1 SALES OF REAL PROPERTY -- APPRAISALS WITHIN ONE YEAR**

**12.8.1.1**

Probate Code Section 10309 requires that real property to be sold in an estate proceeding must be appraised within one year prior to the date of the court confirmation hearing. Probate Code Section 8802 requires that the first appraisal of all property be as of the date of death. All appraisals must reflect the fair market value of the property.

**12.8.1.2**

When the date of the confirmation hearing is more than one year after date of death, a reappraisal for sale (on the appropriate Judicial Council form) must be filed with the Court before the confirmation hearing can proceed. Reappraisals must be made by the probate referee unless appointment of the referee has been waived by the Court.

**12.8.1.3**

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

Appraised as of the date of death  
(insert month, day and year)                   \$ \_\_\_\_\_  
Appraised as of (insert current  
month, day and year)                           \$ \_\_\_\_\_

**12.8.1.4**

The sum offered for the property must be at least 90 percent of the appraised value of the property within one year prior to the confirmation hearing. (Probate Code Section 10309.)

*(Effective 5/19/98)*

**RULE 12.8.2 BOND ON SALE OF REAL PROPERTY**

**12.8.2.1**

Petitions for confirmation of sale of real property shall set forth the amount of bond in force at the time of the sale and the amount of property in the estate which is required to be covered by a bond (see Rule 12.5 and Probate Code Section 8482). If no additional bond is required or if bond is waived, that fact should be alleged in the petition.

**12.8.2.2**

Personal representatives subject to a bonding requirement who have full authority under The Independent Administration of Estates Act shall post their initial bond upon qualification in an amount sufficient to cover all personal property, income for one year from all sources, and the estimated proceeds of the sale of the real property (See Rule 12.4.1.3 and Probate Code Section 10453). *(Effective 5/19/98)*

## **RULE 12.8.3 BROKER'S COMMISSION ON SALE OF REAL PROPERTY**

### **12.8.3.1 Improved Property**

Upon the confirmation of sale of improved real property, the Court ordinarily will allow a broker's commission not to exceed six percent (6%), or such lesser percentage as has been negotiated between the personal representative and the broker subject to net sale amount (See Court Rule 12.8.7.2).

### **12.8.3.2 Unimproved Property**

A broker's commission not exceeding ten percent (10%) of the first Twenty Thousand Dollars (\$20,000.00), eight percent (8%) of the next Thirty Thousand Dollars (\$30,000.00) and five percent (5%) of the balance of the sales price, ordinarily will be allowed for the sale of unimproved real property. The Court will determine, in each instance, whether property is "unimproved property."

### **12.8.3.3**

Agents or brokers bidding or overbidding on their own behalf or on behalf of an entity of which they are part owner will not be allowed a commission (Probate Code Section 10160.5).

### **12.8.3.4**

The Court will not consider whether a broker is employed when receiving overbids.

### **12.8.3.5 DIVISIONS OF COMMISSIONS**

Counsel is referred to Probate Code Sections 10160 et seq. The contents of those sections have been summarized in the following chart which has been reprinted here with the permission of the person who prepared the chart.

"The ABCs of Dividing the Commission Pie in Probate Sales"  
By Lloyd W. Homer, Esq.  
Campbell

The following chart demonstrates the division of the broker commission when estate property is sold subject to Court confirmation pursuant to Probate Code Sections 10160-10168. If the property subject to sale is being sold pursuant to the personal representative's authority under independent administration, the chart is inapplicable and Probate Code Sections 10406 must be consulted. For sales subject to Court confirmation, the personal representative also needs to consult Probate Code Sections 10250-10264 (personal property) and Sections 10300-10316 (real property) regarding the manner of conducting the sale.

#### WHO ARE A, B AND C?

- A = The estate (Seller). If the estate has a broker, that will be broker A.
- B = The bidder (Buyer). If the bidder has a broker, that will be broker B.
- C = The successful over-bidder (New Buyer).  
If C has a broker, that will be broker C.

FACTS: Original bid \$100,000

Where there is an overbid, the increased bid is \$110,000

Commission allowed by the Court is 6%

**Local Rules of the Superior Court of California, County of Alameda**

<b>A Seller</b>	<b>B Bidder</b>	<b>C Over-bidder</b>	<b>Probate Code Section</b>	<b>Commission To Broker</b>
1. No Broker	No Broker	No Overbid	None	None
2. No Broker	No Broker	No Broker	None	None
3. No Broker	No Broker	Broker	10163	C receives \$5,000 (not \$6,600 because of the limitation of Section 10162)
4. No Broker	Broker	No Overbid	10162.3	B receives \$6,000
5. No Broker	Broker	No Broker	10164	B receives \$6,000
6. No Broker	Broker	Broker	10165(c)(2) 10165(b)	B receives \$3,000 C receives \$3,600 (\$3,000 on the original bid and \$600 on the increased bid)
7. Broker	No Broker	No Overbid	10162.5	A receives \$6,000
8. Broker	Broker	No Overbid	10162.7	A receives \$3,000 B receives \$3,000 (or as A and B have agreed)
9. Broker	No Broker	No Broker	10162.5	A receives \$6,000
10. Broker	No Broker	Broker	10165(c)(1) 10165(b)	A receives \$3,000 C receives \$3,600 (\$3,000 on the original bid and \$600 on the increased bid)
11. Broker	Broker	Broker	10164(c)	A receives \$3,000 B receives \$3,000 (or as A and B have agreed)
12. Broker	Broker	Broker	10165(c)(3)  10165	A receives \$1,500 B receives \$1,500 (or as A and B have agreed) C receives \$3,000 on the original and \$600 on the increased bid

*(Effective 5/19/98)*

**RULE 12.8.4 CASH DEPOSIT TO ACCOMPANY BID ON REAL PROPERTY**

**12.8.4.1**

Bids for the purchase of real property shall be accompanied by a minimum of ten percent (10%) of the amount bid. When an overbid is made in court, the bidder shall submit cash,

money order or certified check at the time of the hearing in the amount of ten percent (10%) of the minimum overbid. (The minimum overbid is an increase over the bid returned to the Court by ten percent (10%) of the first ten thousand dollars (\$10,000.00) and five percent (5%) of the balance of the sales price.) Overbids shall be in accordance with Probate Code Section 10311.

#### **12.8.4.2**

At the request of the attorney for the estate selling the real property, or on the Court's own motion if good cause exists, the Court may relax the requirements set forth above. The petition for confirmation of sale or the request made in open Court should state the reasons for the lower deposit (e.g., all-cash financing by the Veteran's Administration, or by Cal-Vet or by some other governmental agency).

*(Effective 5/19/98)*

### **RULE 12.8.5 NOTICE OF SALE OF PROPERTY SOLD**

Notices and returns of sale should provide a common as well as a legal description of the property sold, as well as the Assessor's Parcel Number. *(Effective 5/19/98)*

### **RULE 12.8.6 TERMS TO BE STATED IN NOTICE OF SALE OF REAL PROPERTY**

#### **12.8.6.1**

Counsel should use extra care in wording of the published notice of sale. If the property is being sold subject to an encumbrance, the notice should so state. (See **Mains v. City Title Insurance Co.**, 34 Cal. 2d 580 (1949). It is advisable that the notice call for "[c]ash or cash and such credit terms and conditions as the Court may approve."

#### **12.8.6.2**

The terms of the sale shall be consistent with the terms stated in the notice.

*(Effective 5/19/98)*

### **RULE 12.8.7 DISCLOSURE OF EXTRAORDINARY COSTS ON SALE OF REAL PROPERTY**

#### **12.8.7.1**

The petition shall include a full disclosure of all extraordinary costs which 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 which the estate will be required to pay shall be disclosed in the petition and included in the order.

#### **12.8.7.2**

Extraordinary costs will be deducted from the gross bid, and the resultant "net" will be used for the following purposes:

1. Determination if the sale is within ninety percent (90%) of appraised value;

2. The base figure against which overbids are made; and
3. The real estate broker's commission.

The above amounts shall be set forth in an attachment to the petition.

*(Effective 5/19/98)*

#### **RULE 12.8.8 NOTICE OF CONFIRMATION HEARING**

In addition to the requirements of notice contained in Probate Code Section 10308(c), notice of the Court hearing for confirmation of a sale of real property shall be mailed at least fifteen (15) days prior to the hearing date to all heirs and beneficiaries who may have an interest in the subject real property. *(Effective 5/19/98)*

#### **RULE 12.8.9 APPEARANCE BY BIDDER**

Any potential bidders and their representatives, to be in Court at the time the petition for confirmation of sale is heard. *(Effective 5/19/98)*

#### **RULE 12.8.10 EXCLUSIVE LISTINGS**

##### **12.8.10.1**

Personal representatives with authority to administer the estate under The Independent Administration of Estates Act need not obtain a Court order to enter into an exclusive listing for real property.

##### **12.8.10.2**

Personal representatives who determine it is necessary or advantageous to seek such a Court order shall observe the following:

1. Such petitions shall be granted only where a clear showing of necessity and advantage to the estate is made. Ordinarily, these petitions will be granted ex parte. Facts indicating necessity and advantage might include: past unsuccessful exposure, condition of the property and/or neighborhood, out-of-county residence of personal representative, or a contract which pre-dates the establishment of the court proceeding.
2. The petition and proposed order shall also include the name of the broker, address of the property, the fact that the Court sets commissions and that they are payable only if the sale is confirmed, and that all commissions are payable in accordance with Probate Code Sections 10160 et seq. The duration of the contract must be specified. Ordinarily, the Court will not approve a term exceeding ninety (90) days.
3. A copy of the listing agreement should be submitted with the petition. The listing agreement must conform to the conditions set forth above and shall further set forth in detail the obligations and duties of the broker, including but not limited to the requirement to list on Multiple Listing Service(s), place signs and advertise in newspaper(s).
4. Extensions of listing agreements shall follow the above procedures.

*(Effective 5/19/98)*

**RULE 12.8.11 SALES OF PERISHABLE OR DEPRECIATING PROPERTY**

If the estate contains perishable or depreciating property, it should be disposed of promptly. If there has been an unreasonable delay in disposing of perishable or depreciating property, the Court may hold the personal representative accountable for the decreased value of the property. *(Effective 5/19/98)*

**RULE 12.8.12 SALE OF PROPERTY SPECIFICALLY DEVISED OR BEQUEATHED**

On a sale of property specifically devised or bequeathed, either notice of the time and place of the hearing of the return of sale shall be given to the specific devisee or legatee, or the consent of such devisee or legatee to such sale shall be filed with the Court. *(Effective 5/19/98)*

**RULE 12.8.13 SALE OF SECURITIES**

**12.8.13.1 Subject to Order of Court**

1. 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:

- A. Statement as to necessity for sale, giving reasons, i.e., taxes, expenses of administration, indivisible number of shares, etc.
- B. Consent or request of heirs; if the securities are specifically bequeathed, the petition should so allege and the written consent of the legatee should be filed.
- C. An allegation that a power of sale is conferred by the will.

2. If securities 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, 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 (e.g., inventory and appraisal value).

**12.8.13.2 Subject to Independent Administration of Estates Act (Probate Code Sections 10400 et seq.)**

1. A personal representative with authority to administer the estate under The Independent Administration of Estates Act may sell securities listed on an established stock or bond exchange and other assets referred to in Probate Code Section 10537, when sold for cash, without court order. The sale shall be reported in the account and report filed by the personal representative.

2. Notwithstanding the above, real or personal property may be sold in accordance with the provisions of Probate Code Sections 10400 et seq.; provided, however, that any person objecting to a proposed action under Probate Code Sections 10400 et seq. shall give notice to the personal representative at least 48 hours in advance if he or she petitions the Court for an order restraining such sale, and the petitioner must show good cause.

*(Effective 5/19/98)*

**RULE 12.9 ACCOUNTS OF EXECUTORS AND ADMINISTRATORS**

**RULE 12.9.1 SUGGESTED FORM OF ACCOUNTS**

**12.9.1.1**

All accounts shall be typewritten on standard legal paper and shall be numbered at the bottom of each page. Each schedule shall have the reference and title typed at the bottom of each page, in addition to any other titling, in the following format: "Schedule A: Receipts, page 1 of 4 pages."

**12.9.1.2**

Where a particular schedule is unnecessary, that fact shall be noted in the Summary of Account with the word "none" in the blank provided for the total from the schedule, and no page need appear in the schedules.

**12.9.1.3**

The account and report shall specify the beginning and ending dates of the account and shall detail all receipts and all disbursements of the fiduciary. If an item is not self-explanatory, an explanation must appear either in the account or in the report accompanying the account. Receipts shall indicate the date of receipt, source and amount. It is not acceptable to show a lump sum amount for a particular source that pays more frequently than annually. Disbursements shall indicate date of expenditure, expense, purpose and amount.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.9.3 REPORTING OF INCOME AND PRINCIPAL**

When part of the estate is to be distributed to a trustee, and accumulated income is to be paid over by the trustee to the trust beneficiaries, the account should allocate receipts and disbursements between principal and income. *(Effective 5/19/98)*

**RULE 12.9.4 COSTS**

**12.9.4.1**

Ordinarily, the Court will not allow reimbursement for costs of duplication of documents, facsimile, on-line or telephone calls incurred by the personal representative or the attorney, as these presumably are part of overhead and should be absorbed in statutory fees or commissions. On line costs for heir finding services will ordinarily be approved.

**12.9.4.2**

Costs must be itemized. However, up to a total of \$50.00 in "miscellaneous costs" will be approved without the necessity of itemization.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.9.5 WAIVER OF ACCOUNT**

The Court will approve a final distribution without an account only when each of the applicable requirements of Probate Code Section 10954 has been satisfied. *(Effective 5/19/98)*

**RULE 12.10 COMPENSATION OF PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS**

**RULE 12.10.1 COMMISSIONS AND FEES MUST BE FIXED BY COURT**

**12.10.1.1**

There is no authority for payment of any commissions or fees in advance of a Court order authorizing such payment. Where commissions or fees are paid in advance of court authorization, at the time of the accounting or other request for approval of compensation, the Court ordinarily will require an appearance by counsel or declaration stating the reasons therefor. The Court may require the personal representative or the attorney respectively to pay interest at the applicable legal rate from the date of payment to the date of the order authorizing the same, or may impose a surcharge, or may impose both interest and a surcharge.

**12.10.1.2**

The attention of counsel is called to Probate Code Section 903 for estates commenced prior to July 1, 1991, and Section 10803 for estates commenced on or after July 1, 1991, which provide that contracts for compensation higher than that provided for by the Probate Code are void.

**12.10.1.3**

All contingency fee contracts to which the personal representative is a party shall be submitted to the Court in advance for approval. A copy of the contingency fee contract shall be attached to the petition requesting approval.

*(Effective 5/19/98)*

**RULE 12.10.2 COMMISSIONS AND FEES MUST BE STATED IN ALL PETITIONS**

**12.10.2.1**

In all petitions for distribution, even when accompanied by a waiver of accounting, the report shall state the personal representative's commissions to be paid and the attorneys' fees to be paid, and shall explain how such commissions and fees were calculated.

**12.10.2.2**

Application for compensation for services will not be considered unless the caption, prayer of the petition, and notice to distributees contain a reference to the application for compensation.

*(Effective 5/19/98)*

**RULE 12.10.3 PETITION FOR ALLOWANCE ON ACCOUNT OF FEES AND COMMISSIONS**

Allowance on account of statutory compensation of an attorney or the personal representative must be in accordance with the work actually completed, and, in any event, the last twenty-five percent (25%) of the statutory compensation ordinarily will not be allowed before the approval of the final account and the decree of final distribution. In the Court's discretion, the full statutory compensation may be allowed prior to final distribution in cases where the estate or heirs will benefit (e.g., where it would be beneficial to reduce income taxes in a given fiscal period) or in cases where ordinary services have been completed and final distribution is delayed only in order to perform extraordinary services in the interest of the estate or the heirs. *(Effective 5/19/98)*

**RULE 12.10.4 COMPENSATION BASIS WHERE ACCOUNTING WAIVED**

Where an accounting has been waived, the basis of the statutory fee shall be the inventory value of the estate plus income, plus gains on sales, less losses on sales, provided the petition complies with the requirements of California Rule of Court 7.705 (b). *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.10.5 ATTORNEY/PERSONAL REPRESENTATIVE SHALL ORDINARILY NOT SHARE IN PARTNERS' FEES**

Compensation will not be awarded both to an attorney who is the personal representative and to the law firm of which the attorney/personal representative is a member unless the attorney/personal representative first executes and files an agreement in the probate proceeding not to participate in legal fees paid to his or her law firm. The agreement must also be executed by the attorney/personal representative's partners or other authorized principal(s) of the law firm. An exception to this rule will be made only when expressly authorized by the decedent's will. *(Effective 5/19/98)*

**RULE 12.10.6 COMPENSATION FOR EXTRAORDINARY SERVICES**

**12.10.6.1**

Application for compensation for extraordinary services will not be considered unless the caption, prayer of the petition and notice to distributees contain a reference to the application for extraordinary compensation.

**12.10.6.2**

Except as noted below for routine real property sales and tax work, applications for fees or commissions for extraordinary services shall be accompanied by a complete statement of facts upon which such application is based and shall specify the amount requested for each item of service, not merely a "reasonable amount." The services claimed to be extraordinary shall be described in detail, including dates, time spent, necessity for the work, complexity of legal and/or factual issues and results accomplished. Submission of itemized time sheets by themselves will ordinarily not be sufficient to establish a claim for extraordinary services. Each specific area or item of extraordinary service should be segregated into different categories, such as litigation, sale of real property (or where applicable two categories for two sales of real

property), preparation of federal estate tax return, other tax work, etc. Where applicable, each category of extraordinary service should be segregated into sub-categories such as correspondence, discovery, settlement discussions, trial proceedings, etc. For each category of service, specify the total number of hours spent by each attorney or paralegal and specify the hourly rate of each individual and provide some description of the experience and expertise of each individual providing extraordinary service.

Whenever statutory fees exceed \$20,000, and the attorney or personal representative is requesting extraordinary fees that exceed the guidelines of Rule 12.10.7 and 12.10.8, the court will require a declaration, which outlines all services, provided, both ordinary and extraordinary.

All information should be provided in a declaration or declarations under penalty of perjury.

### **12.10.6.3**

Compensation for extraordinary services ordinarily will not be approved before the final accounting except in cases where it is shown to the Court's satisfaction that the estate or heirs will benefit, e.g., where it would be beneficial to reduce income taxes in a given fiscal period, or where ongoing litigation precludes presentation of a final accounting and attorneys must be retained or compensated to represent the estate in ongoing litigation. The Court ordinarily will allow extraordinary compensation for representing the estate in litigation outside of the regular administration of the estate upon a properly noticed petition upon completion of the service. Upon a proper showing, the Court may authorize progress payments prior to completion. Where the attorney or personal representative requesting a progress payment prior to completion of extraordinary work believes that public disclosure of the information required by subparagraph 2 immediately above may adversely affect the estate's interest in ongoing litigation, the petitioner may include an allegation in the petition stating why the detailed information has been deleted from the petition and that said detailed information is concurrently being filed with the Court in a sealed envelope with a request for an in camera inspection. If it is shown to the satisfaction of the Court that said detailed information may adversely affect the estate's interest in ongoing litigation, the Court will ordinarily order that the matter remain under seal until the resolution or termination of the ongoing litigation.

### **12.10.6.4**

Extraordinary compensation and costs of a will contest before probate, a petition to revoke a will after probate, and/or a petition to determine persons entitled to distribution from the estate will not be allowed from the estate unless it is shown to the Court's satisfaction that the personal representative was under a legal obligation to defend or prosecute such contest or proceeding or that the heirs and beneficiaries received a benefit so that on distribution they bear the compensation and costs in proportion to their distributive shares (See **Estate of Pryor**, 51 Cal. App. 2d 735 (1942)).

### **12.10.6.5**

When evaluating requests for extraordinary compensation, the Court may consider whether the statutory compensation is sufficient to compensate adequately for all services that have been rendered and may request a declaration of the attorney or the personal representative substantiating all services required.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.10.7 EXTRAORDINARY COMPENSATION FOR SALES OF REAL PROPERTY**

**12.10.7.1**

In determining the compensation of an attorney for extraordinary services rendered with respect to real property sales, the Court ordinarily will consider the amount of time involved, whether a real estate broker was employed, the involvement of the attorney in negotiations, the nature of other services rendered (e.g., drafting of the sales agreement and its complexity, preparation of deeds and other documents) and other similar information. In all cases, the Court will assume that the attorney has reviewed the sales agreement and attended to normal closing matters. Where the sale of the real property is subject to court confirmation, the Court will additionally assume that the attorney has prepared the report and petition and order for confirmation of sale and appeared at the hearing on the sale. The Court will ordinarily consider \$750 to be reasonable compensation to the attorney for such services rendered when the sale was made under The Independent Administration of Estates Act and there was no court hearing confirming the sale. The Court will ordinarily consider \$1,000 to be reasonable compensation to the attorney for such services rendered when the sale was subject to court approval and a report and petition requesting approval of the sale was filed and the attorney appeared at the hearing. Where the sale was made under The Independent Administration of Estates Act without a court hearing, and the petition requests compensation to the attorney for such extraordinary services in the amount of \$750, the amount requested will ordinarily be approved by the Court without requiring detailed information as to the services. Where the sale was made subject to court approval at a court hearing, and the petition requests compensation to the attorney for such extraordinary service in the amount of \$1,000, the amount requested will ordinarily be approved by the Court without requiring detailed information as to the services.

**12.10.7.2**

In determining the compensation, if any, of a personal representative for extraordinary services rendered with respect to real property sales, with or without a court hearing confirming the sale, the Court ordinarily will consider the amount of time involved, whether a real estate broker was employed, the involvement of the personal representative in negotiations, and the nature and necessity of other services rendered. The Court will consider a request for compensation to the personal representative for extraordinary services rendered with respect to real property sales only on a case-by-case basis.

*(Effective 5/19/98)*

**RULE 12.10.8 EXTRAORDINARY COMPENSATION FOR PREPARATION OF THE FEDERAL ESTATE TAX RETURN AND THE CALIFORNIA ESTATE TAX RETURN AND OTHER TAX-RELATED SERVICES**

**12.10.8.1**

In determining the compensation of a personal representative or an attorney for the preparation of the federal and California estate tax returns, the Court ordinarily will consider the hours spent, the intricacy or peculiar nature of any of the issues or computations involved, the extent of any audit, the value of the gross estate, the amount of tax, if any, and other similar information. The Court ordinarily will consider one fee of \$1,500 to be reasonable compensation for the preparation of both the federal and California estate tax returns, and will not require detailed information as to the services when the amount requested by the personal representative or the attorney does not exceed \$1,500.

**12.10.8.2**

In determining the compensation of a personal representative or an attorney for the personal representative for extraordinary tax-related services other than the preparation of the federal and California estate tax returns, the Court ordinarily will consider a request for compensation on a case-by-case basis.

*(Effective 5/19/98)*

**RULE 12.10.9 EXPENSES OF ACCOUNTING MAY BE DEDUCTED FROM THE PERSONAL REPRESENTATIVE'S STATUTORY COMPENSATION**

The personal representative may employ tax counsel, tax auditors, accountants, or other tax experts for the preparation of tax returns and for the other tax-related services. To the extent that the personal representative utilizes the services of such counsel, auditors, accountants, or other experts to perform ordinary accounting and bookkeeping services, including the preparation of the schedules for court accountings and pays for such services from the funds of the estate, the Court may deduct any such sums so paid from the funds of the estate from the personal representative's statutory commissions. *(Effective 5/19/98)*

**RULE 12.10.10 STATUTORY COMPENSATION FOR ORDINARY SERVICES BASED ON THE VALUE OF THE SURVIVING SPOUSE'S COMMUNITY PROPERTY**

Property passing to a surviving spouse is not subject to administration unless an election is properly filed pursuant to Probate Code Sections 13500 et seq. If such an election has not been filed, the value of the surviving spouse's one-half interest in the community property may not be taken into consideration when calculating statutory commissions or fees. *(Effective 5/19/98)*

**RULE 12.10.11 ATTORNEYS' FEES RELATED TO SPOUSAL PROPERTY PETITIONS**

Attorneys' fees for services performed in connection with the filing of a spousal property petition shall be determined by private agreement between the attorney and the client, and are not subject to approval by the Court unless there is no agreement or unless there is a dispute

concerning the agreement. If there is no agreement or if there is a dispute concerning the agreement and a petition is filed pursuant to Probate Code Section 13660, the attorney shall include allegations in the petition or shall file a separate declaration setting forth (i) the fair market value of the assets described in the petition, (ii) the basis upon which such value was established, and (iii) a calculation of the proposed fee if it is based on the fair market value of the decedent's one-half of the property described in the petition. In addition, the declaration shall describe the services rendered by the attorney in representing the person filing the petition. If the property described in the petition has been appraised by a Probate Referee, that appraisal ordinarily will be accepted as the fair market value of the property. If there is a private agreement between the attorney and the client concerning fees, a copy of the agreement shall be attached to the petition and any dispute as to the meaning of the agreement shall be described in detail. *(Effective 5/19/98)*

## **RULE 12.11 PRELIMINARY AND FINAL DISTRIBUTION**

### **RULE 12.11.1 PROPERTY TO BE DISTRIBUTED MUST BE LISTED**

#### **12.11.1.1**

No distributions of assets from a decedent's estate may be made by a personal representative without a prior court order. A surcharge may be imposed by the Court for failure to comply (See Probate Code Sections 11620 et seq. for procedures on preliminary distribution).

#### **12.11.1.2**

Property to be distributed shall be listed and described in detail, either in the body of the petition or in the prayer, or by a schedule in the accounting which must be incorporated in the petition by reference. Description by reference to the will or inventory is not acceptable. This applies to preliminary and final distributions with or without an accounting.

#### **12.11.1.3**

If specifically bequeathed or devised property is not in existence at the time of final distribution, the petition shall set forth a full explanation concerning that fact.

*(Effective 5/19/98)*

### **RULE 12.11.2 PROPOSED DISTRIBUTION MUST BE INDICATED**

#### **12.11.2.1**

The body of the petition, or an attached schedule incorporated by reference, shall include a list of the names of the distributees and the assets they are to receive.

#### **12.11.2.2**

For cash distributions, state the estimated amounts to be distributed subject to court-ordered fees and commissions, costs and post-accounting income (e.g., interest or dividends). Since the exact amount of cash may not be known, declaration by the petitioner indicating the

final amounts distributed to each beneficiary shall be submitted with the receipts upon distribution.

*(Effective 5/19/98)*

### **RULE 12.11.3 DESCRIPTION OF DISTRIBUTEES**

#### **12.11.3.1**

When the inventory value of the estate exceeds one million dollars (\$1,000,000), the names and present addresses of all persons entitled to receive property of the estate must appear in the petition for final distribution.

#### **12.11.3.2**

If a trust is established in which property will be distributed to a beneficiary upon reaching a given age, the birth date of the beneficiary of the trust must be indicated. In all cases where property is distributed to minors, their birth dates must be indicated.

*(Effective 5/19/98; Amended 1/1/04)*

### **RULE 12.11.4 INTESTACY**

#### **12.11.4.1**

Heirs who take by virtue of intestacy must be sufficiently described to permit the Court to determine if the laws of intestate succession have been properly applied, and mere allegations of "heir" will not be sufficient (Refer to Probate Code Sections 6400 et seq.).

#### **12.11.4.2**

If the issue of a decedent, or of a decedent's parents or of a decedent's grandparents are of unequal degree of kinship to the decedent and take in the manner provided in Probate Code Section 240, the petition must indicate the heir's parentage and the approximate date of the parent's death.

*(Effective 5/19/98)*

### **RULE 12.11.5 PROPERTY OF PREDECEASED SPOUSE**

#### **Rule 12.11.5.1**

If the intestate decedent leaves no issue or surviving spouse, and the decedent has been predeceased by a spouse who died not more than 15 years before the decedent for purposes of distributing real property and not more than five years before the decedent for purposes of distributing personal property on an aggregate value of ten thousand dollars (\$10,000) or more, the petition must affirmatively allege whether there are heirs who take by virtue of Probate Code Section 6402.5.

**12.11.5.2**

If there are such heirs, they should be identified with a showing of their relationship to the predeceased spouse.

**12.11.5.3**

For purposes of distributing personal property, the exact personal property to be distributed should be identified in the petition.

*(Effective 5/19/98)*

**RULE 12.11.6 ALLEGATION RE COMMUNITY PROPERTY**

**12.11.6.1**

All petitions for distribution of the estate of a decedent who was married at the time of his or her death shall contain an allegation as to the character of the property, whether separate or community. Such statement shall be made in both testate and intestate estates.

**12.11.6.2**

If there are heirs as set forth in Rule 12.11.5 immediately above, the petitioner shall set forth which items of the decedent's property can be traced from the prior marriage. If the decedent's property cannot be so traced, the petition should address and explain the situation.

*(Effective 5/19/98)*

**RULE 12.11.7 FORMS OF DECREES**

A decree of distribution shall 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, shall be included in the body of the decree or in an attachment incorporated by reference. *(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.11.8 DECREES OF DISTRIBUTION ESTABLISHING TESTAMENTARY TRUSTS**

Upon distribution, it is the duty of the Court to determine whether a valid trust has been created by a will, to determine the scope and terms of the trust, and to order distribution of the trust property to the trustee. Since the decree of distribution supersedes the will, the terms of the trust shall be incorporated in the decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. *(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.11.9 DECREES GRANTING ADDITIONAL POWERS TO TRUSTEES**

When additional powers (not conferred by will) are requested by the trustee or executor in a petition for distribution, notice must be given in accordance with the provisions of Probate Code Section 17203. *(Effective 5/19/98)*

**RULE 12.11.10 AGREEMENT FOR DISTRIBUTION OR ASSIGNMENT OF ASSETS**

**12.11.10.1**

The Court follows the terms of the will or the law of intestate succession in distributing assets of an estate. If the distributees seek a distribution in a manner other than that provided by the will or by the laws of intestate succession, an agreement or assignment must be filed in the probate proceedings, signed by all parties affected by the distribution.

**12.11.10.2**

If appropriate, a guardian ad litem may be appointed for certain persons, including minor beneficiaries and beneficiaries who are not in being (See Probate Code Section 1003).

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.11.11 DISTRIBUTION TO MINORS OF CASH UP TO \$20,000**

**12.11.11.1**

The Court ordinarily will permit distribution to parents of a minor entitled to receive property under Probate Code Section 3401 or 3413. However, court policy requires that any cash distributed to a minor be placed in a blocked account at a bank or savings and loan association. Withdrawals from such account shall be allowed only pursuant to a court order. Before the Court will order such a distribution under Probate Code Section 3401, the written assurance required under Section 3401(c)(2) must be filed with the Court.

**12.11.11.2**

The personal representative shall file a receipt acknowledged by the financial institution indicating the deposit of cash into a blocked account.

**12.11.11.3**

Ordinarily, withdrawals requested during minority may be obtained ex parte upon a showing of good cause.

**12.11.11.4**

When the minor reaches age 18, ex parte application may be made to the Court for an order to release the funds directly to the beneficiary. A certified copy of the birth certificate shall be attached to the petition.

**12.11.11.5**

In the absence of a guardianship, the estate action number may be used for the filing of documents pertaining to the assets distributed under this section.

*(Effective 5/19/98)*

**RULE 12.11.12 DISTRIBUTION TO DECEASED HEIR, LEGATEE OR DEVISEE**

When an heir, legatee or devisee dies during the course of administration of an estate, the Court will require that distributee's share be distributed to his or her personal representative for administration, unless an exception to this rule applies which is available under Probate Code Section 13100 (declaration regarding personal property) or Probate Code Section 11802 (minor issue of decedent). The original copy of the appropriate declaration shall be filed in the estate proceeding. *(Effective 5/19/98)*

**RULE 12.11.13 DISTRIBUTION TO "MISSING" HEIR**

When distribution is to be made to an heir whose whereabouts is unknown, notice to the State Controller shall be given pursuant to Probate Code Section 11601. *(Effective 5/19/98)*

**RULE 12.11.14 DISTRIBUTION WHEN CIVIL SUIT PENDING AGAINST ESTATE**

If, at the time of distribution, a civil suit is pending against the estate on a rejected claim, and a lis pendens notice has been filed, the amount of the disputed claim must be paid into Court. *(Effective 5/19/98)*

**RULE 12.11.15 FEDERAL ESTATE TAX TO BE PAID BEFORE DISTRIBUTION**

**12.11.15.1**

Ordinarily, federal estate taxes should be paid prior to distribution. Upon good cause shown, distribution will be allowed without payment of federal estate tax provided an adequate closing reserve is retained to cover such taxes and possible interest or penalties.

**12.11.15.2**

Probate Code Section 20110 requires the Court to prorate the federal estate tax among those interested in the taxable estate, except where the will directs otherwise. When a pro-ration is required, the accompanying account shall include a schedule indicating the method by which the pro-ration is to be accomplished.

*(Effective 5/19/98)*

**RULE 12.11.16 FRANCHISE TAX BOARD CLEARANCE**

If the estate exceeds one million dollars (\$1,000,000), and amounts totaling more than two hundred and fifty thousand dollars (\$250,000) are to be distributed to a beneficiary or beneficiaries living outside of California, a certification is required under Revenue and Taxation Code Section 19513. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.11.17 ALLEGATION ON CLAIMS**

**12.11.17.1**

In reports accompanying accounts or where an accounting is waived, it is not sufficient simply to allege that all creditor claims have been paid. Rather, all such claims filed with the Court must be listed, showing the claimant, the amount claimed and the disposition of each

claim. If any such claim has been rejected, the date of service of notice of rejection of the creditor claim shall be stated, as well as its disposition, whether by suit or otherwise.

**12.11.17.2**

The petition must also state that the time for filing claims has expired and that all known or reasonably ascertainable creditors of the estate described in Probate Code Section 9050 have been given the notice described in Probate Code Section 9052 or are within the class of creditors described in Section 9054.

**12.11.17.3**

The required allegation must appear in the final report, even though it may have appeared in whole or in part in prior reports.

*(Effective 5/19/98)*

**RULE 12.11.18 PRELIMINARY DISTRIBUTION BOND**

In the event of a preliminary distribution after the expiration of the period for filing of creditors' claims, the bond required by Probate Code Section 11622 ordinarily will not be dispensed with, unless an account has been filed and approved or it otherwise appears that any outstanding claims or taxes are adequately secured. *(Effective 5/19/98)*

**RULE 12.11.19 VOUCHERS BY PERSONAL REPRESENTATIVES**

Personal representatives need not file vouchers with their accounts unless ordered to do so by the Court or requested to do so by a person interested in the estate. (See Probate Code Section 10901.) *(Effective 5/19/98)*

**RULE 12.11.20 PAYMENT OF INHERITANCE TAXES (FOR ESTATES OF DECEDENTS DYING PRIOR TO JUNE 9, 1982)**

**12.11.20.1**

Neither the determination nor the payment of California inheritance tax is required prior to preliminary or final distribution. However, unless both an order fixing inheritance tax and a countersigned receipt for full payment of the tax are on file, any order for preliminary or final distribution shall contain the following (or substantially similar) language:

IT IS FURTHER ORDERED that this decree of \_\_\_\_\_ (final) (preliminary) distribution shall be without prejudice to any lien, claim or charge for inheritance tax of the State of California, and the respective interests so distributed shall be subject to a lien for the payment and discharge of any taxes and charges due under the Revenue and Taxation Code of the State of California. The personal representative of this estate shall not be discharged without the consent of the Controller of the State of California.

**12.11.20.2**

If the inheritance taxes have been fully ordered and paid and the documents so indicating are on file, the order shall be worded to make a finding to that effect.

*(Effective 5/19/98)*

**RULE 12.11.21 ALLEGATIONS RELATING TO INDEPENDENT ACTS**

The petition for final distribution must list and describe all independent acts taken without prior court approval if notice of the proposed action was required. The petition must contain an allegation that the period for the notice of proposed action was met or waived and that no objections were received. *(Effective 5/19/98)*

**RULE 12.11.22 ACCOUNTING AND COMPENSATION**

See Rule 12.9 for preparation of the accounts by executors and administrators and Rule 12.10 for commissions and fees allowed personal representatives and attorneys. *(Effective 5/19/98)*

**RULE 12.12 CONTESTED MATTERS**

**RULE 12.12.1 HEARINGS ON CONTESTED MATTERS**

**12.12.1.1**

**Oakland**

**1. 9:30 a.m. Calendar:** Except for petitions to appoint conservators and guardians, all petitions are initially set on the general calendar (See Attachment A regarding day and time). At that initial hearing, if all counsel so stipulate, a contested matter may be submitted to the Court for decision or otherwise summarily disposed of by the Court.

**2.** If further hearing is required and the Court determines the matter can be completed in no more than fifteen (15) minutes and that no oral testimony will be required, the case will ordinarily be continued to the special setting calendar on Monday, Tuesday or Wednesday (See Attachment A regarding day and time).

**3. Short Cause Matters:** If further hearing is required and the Court determines the matter cannot be completed on the special setting calendar but will not require more than two (2) afternoons of trial, the case will ordinarily be heard in the Probate Department pursuant to the provisions of Rule 12.12.2 below ("Mandatory Settlement Conference and Trial for Short Cause Matters") (See Attachment A regarding day and time). Any matter set for short cause hearing that is not completed within 5 hours shall be subject to California Rules of Court, Rule 3.735(c).

**4. Off Calendar (for Long Cause Matters):** If further hearing is required and the Court determines the matter cannot be completed in two (2) afternoons of trial, the case will ordinarily be taken off calendar in the Probate Department and the parties directed to proceed with their case in the same manner as any civil matter which is not subject to the requirements of AB 3300, provided, however, that the Probate Department shall mandate a status conference in accordance with Rule 12.12.4 below ("Mandatory Status Conferences for Long Cause Matters").

**12.12.1.2**

**Hayward**

**1. Short Cause Matters:** Except for petitions to appoint conservators and guardians, all petitions are initially set on the general calendar. At that initial hearing if all counsel so stipulate, a contested matter may be submitted to the Court for decision or otherwise summarily disposed of by the Court. If further hearing is required and the Court determines that the matter can be completed in no more than fifteen (15) minutes, and that no oral testimony will be required, the case will ordinarily be continued to the end of the calendar or be specially set by the Court.

**2. Long Cause Matters:** If further hearing is required, the case will ordinarily be taken off calendar in the Probate Department and the parties directed to proceed with their case in the same manner as any civil matter which is not subject to the requirements of AB 3300, provided, however, that the Probate Department shall mandate a status conference in accordance with Rule 12.12.4 below ("Mandatory Status Conferences for Long Cause Matters").

### 12.12.1.3

#### Pleasanton

**1.** All petitions are initially set on the probate calendar (See Attachment A regarding day and time). At that initial hearing if all counsel so stipulate, a contested matter may be submitted to the Court for decision or otherwise summarily disposed of by the Court. If further hearing is required and the Court determines that the matter can be completed in no more than fifteen (15) minutes, and that no oral testimony will be required, the case will ordinarily be continued to the end of the calendar or be specially set by the Court.

**2. Long Cause Matters:** If further hearing is required, the case will ordinarily be taken off calendar in Department 707 and the parties directed to proceed with their case in the same manner as any civil matter which is not subject to the requirements of AB 3300, provided, however, that Department 707 shall mandate a status conference in accordance with Rule 12.12.4 below ("Mandatory Status Conferences for Long Cause Matters").

### 12.12.1.4

#### Fremont

**1.** All petitions are initially set on the probate calendar (See Attachment A regarding day and time). At that initial hearing if counsel so stipulate, a contested matter may be submitted to the Court for decision or otherwise summarily disposed of by the Court. If further hearing is required and the Court determines that the matter can be completed in no more than fifteen (15) minutes, and that no oral testimony will be required, the case will ordinarily be continued to the end of the calendar or be specially set by the Court.

**2. Long Cause Matters:** If further hearing is required, the case will ordinarily be taken off calendar in Department 602 and the parties directed to proceed with their case in the same manner as any civil matter which is not subject to the requirements of AB 3300, provided, however, that Department 602 shall mandate a status conference in accordance with Rule 12.12.4 below ("Mandatory Status Conferences for Long Cause Matters").

### 12.12.1.5

#### All Locations

**1. Continuance to Permit Filing of Written Objections:** When a petition is initially called for hearing, if an attorney or interested party appears and orally objects and declares that written objections may be filed, the Court will continue the hearing for at least three (3) weeks,

with the condition that if written objections are not actually on file at the new hearing date, the Court will proceed to hear the original petition.

**2. Failure to Appear:** If there is no appearance on a matter when called for hearing, the Court may order the matter off calendar. If there is opposition and one side appears when the matter is called and the other side does not appear when the matter is called, the Court may hear the matter as an uncontested matter. In addition, the Court may impose other sanctions under Rule 12.12.5 below ("Sanctions").

**3. Meet and Confer:** Prior to the continued hearing on a contested matter, all attorneys and all parties shall meet and confer in good faith to review the issues pending before the Court and to inspect documents and exchange information so that issues may be resolved, facts may be agreed to by stipulation, and the remaining issues may be clearly delineated and presented to the Court at the time of the hearing. The Court, in its discretion, may refuse to admit into evidence documents and information not exchanged prior to the hearing. When the matter is called for hearing, the attorneys for the parties shall report to the Court the issues which have been settled by agreement and the issues which remain contested.

**4.** Any matter set for hearing from the Probate Department shall be subject to the standing trial management order provided for in Attachment C.

*(Effective 5/19/98; Amended 7/1/99, 1/1/04 and 1/1/07)*

## **RULE 12.12.2 MANDATORY SETTLEMENT CONFERENCE AND TRIAL FOR SHORT CAUSE MATTERS**

### **12.12.2.1 Purpose**

A Mandatory Settlement Conference shall be held in every contested case set for trial in the Probate Department. Cases in which the Public Guardian or Public Administrator is a party are exempted from this requirement. The purpose of such settlement conference is to ensure that contested probate matters are expeditiously processed by requiring the parties to prepare their cases thoroughly in advance through deposition, discovery and settlement procedures, thereby avoiding unnecessary trial proceedings (See Rule 12.12.5 below for sanctions for failure to comply).

### **12.12.2.2 Time and Date**

At the time a case is set for trial, a Mandatory Settlement Conference will also be scheduled. Settlement conferences will be specially set at the convenience of the Court. At the discretion of the Court, more than one Mandatory Settlement Conference may be required for a particular case.

### **12.12.2.3 Attendance**

Each party (including the personal representative or other fiduciary) and the attorney who will represent that party at the trial shall personally attend the Mandatory Settlement Conference, unless the Court excuses an appearance prior to the conference.

#### 12.12.2.4 Continuances

The Mandatory Settlement Conference and the trial may be continued only by order of the Court. A request for continuance must be made by a formal motion which will ordinarily be set on the general calendar (See Attachment A regarding day and time).

The motion may be presented ex parte if all parties waive notice in writing. Such motion shall be made at the earliest possible time prior to the settlement conference date or the trial date. A motion for continuance which is made shortly before the date of the settlement conference or the date of the trial will ordinarily not be granted unless "good cause" is shown (e.g., a family emergency). The Court will ordinarily not view an extension of time to discuss settlement of the case as "good cause."

#### 12.12.2.5 Settlement Conference Statements

**1. Meet and Confer:** No later than thirty (30) days before the Mandatory Settlement Conference, the attorneys and the parties shall meet and confer in good faith to prepare a Joint Settlement Conference Statement.

**2. Filing Joint Statement:** The Joint Settlement Conference Statement shall be filed directly with the Division Probate Department and served on all parties no later than ten (10) calendar days before the settlement conference.

**3. Contested Issues in Joint Statement:** On contested issues, the Joint Settlement Conference Statement shall set forth separately for each party the same information required for a Separate Settlement Conference Statement in accordance with these rules.

**4. Filing Separate Statement:** If the parties are unable to agree on a Joint Settlement Conference Statement, each party shall file directly with the Division Probate Department and serve on all other parties a Separate Settlement Conference Statement in accordance with these rules no later than five (5) calendar days before the settlement conference.

**5. Extension of Time:** The time for filing a Joint Settlement Conference Statement, a Separate Settlement Conference Statement or an Amendment to either may be extended only by order of court.

*(Effective 5/19/98)*

#### **RULE 12.12.2.6 CONTENTS OF ALL MANDATORY SETTLEMENT CONFERENCE STATEMENTS**

The Court, in its discretion, may refuse to accept a Joint Settlement Conference Statement, a Separate Settlement Conference Statement or any Amendment that does not comply with the following format:

**1. Time and Date:** The caption shall set forth the Probate Division, and the date and time of both the settlement conference and the trial.

**2. Joint Statement Compliance:**

**A.** If the parties have failed to prepare and file a Joint Settlement Conference Statement in accordance with these rules, they shall summarize attempted compliance activity, including dates of meetings or discussions and total time spent in attempted compliance.

**B.** All uncontested issues shall be summarized.

**3. Settlement Negotiations:** Counsel shall describe all settlement negotiations, including all offers and counteroffers, and shall address in detail the prospects of future settlement.

**4. Expedited Presentation of the Case:** Counsel shall address in detail the use of summaries or statements, or other expedited means of presenting evidence, in an effort to reduce the length of trial. Examples of expedited means include stipulated facts, agreements regarding admission of evidence and agreements regarding summary of testimony.

**5. Factual Information:** Counsel shall include a complete and objective factual statement of the case including all of the following information which is pertinent:

- A. Date of decedent's death and date of any wills or codicils (if appropriate);
- B. Date of appointment of personal representative/guardian/conservator (if appropriate);
- C. Names, ages and relationships of all persons relevant to the proceeding, and the names of their attorneys;
- D. Date and substance of any prior orders of the court which are pertinent;
- E. Filing date and substance of any pertinent documents (e.g., inventories);
- F. Amount of any bond; and
- G. Any other relevant information.

**6. Statement of Contested Issues:** Counsel shall include a concise statement of each contested issue.

**7. Discussion of Contested Issues:** For each contested issue, counsel shall present a comprehensive discussion which includes the following:

- A. Any facts relevant to that issue.
- B. The following information regarding documents, schedules, summaries and expert reports:
  - (1) A list of all documents, schedules or summaries to be offered at the time of trial regarding the issue.
  - (2) A summary of the document contents and purpose.
  - (3) Copies of all appraisals and reports of experts to be offered at the time of trial.
  - (4) Note: Failure to comply with this provision may result in an order excluding the document, schedule, summary, report, appraisal or testimony of the expert at trial.
- C. The following information regarding witnesses:
  - (1) The name and business address of any percipient or expert witness whom a party intends to call at the time of trial.
  - (2) A brief statement setting forth the substance of the witness's testimony.
- D. All points and authorities or legal argument relevant to that particular issue on which a party intends to rely.

*(Effective 5/19/98)*

## **RULE 12.12.3 VOLUNTARY SETTLEMENT CONFERENCES**

### **12.12.3.1 Joint Request for Voluntary Settlement Conference**

Under Rule 12.2 above, a Mandatory Settlement Conference must be held for all contested matters before they proceed to trial. In addition, the parties may jointly request a Voluntary Settlement Conference. The parties shall participate voluntarily in this procedure in a good faith attempt to settle the contested issues presented to the Court only after the parties have attempted to settle the issues themselves and only when the parties are prepared fully to discuss the issues

with the Court. This procedure shall not be used as a substitute for discovery, settlement discussions between the parties, or preparation for a formal settlement conference or trial.

#### **12.12.3.2 Contents of Joint Request for Voluntary Settlement Conference**

In order to participate in this procedure, the parties shall file in the Division Probate Department a Joint Request for Voluntary Settlement Conference, which shall contain the following:

**1. Dates and Times:** The dates and times for the settlement conference and trial, if the action has been calendared for a Mandatory Settlement Conference and trial, or, if the action has not been calendared for settlement conference and trial, a statement to that effect.

**2. Meet and Confer Requirements:** A statement that, prior to the filing of the Joint Request for Voluntary Settlement Conference, the parties met and conferred in a good faith effort to settle the contested issues, and the probability of settling any remaining contested issues is substantial with the assistance of the Court in a Voluntary Settlement Conference.

**3. Contested Issues:** A summary statement of the contested issues and the respective positions of the parties on these contested issues.

**4. Discovery:** A statement that discovery has been completed on the contested issues.

**5. Availability:** A statement that the parties and their attorneys are available for a Voluntary Settlement Conference at times specified by the clerks in the Probate Department of the applicable division.

#### **12.12.3.3 Scheduling**

After the Joint Request for Voluntary Settlement Conference is filed, the Division Probate Department shall schedule the conference and notify the parties as to the time and date.

#### **12.12.3.4 Attendance**

The parties and their attorneys shall attend the Voluntary Settlement Conference unless an appearance is excused by the Court before the settlement conference.

*(Effective 5/19/98)*

### **RULE 12.12.4 MANDATORY STATUS CONFERENCES FOR LONG CAUSE MATTERS**

A Mandatory Status Conference shall be held by the Court for every long cause matter which is transferred to the civil calendar under Rules 12.12.1.1.(4), 12.12.1.2.(2) and 12.12.1.3.(2). The Court shall schedule the status conference to take place within sixty (60) days of the transfer of the matter to the civil calendar. The parties shall comply with the provisions of Rules 12.12.2.5 and 12.12.2.6 in preparing and filing a status conference statement. The Court in its discretion may schedule additional status conferences. *(Effective 5/19/98)*

### **RULE 12.12.5 SANCTIONS**

If any attorney or any party fails to comply with the provisions of this Rule 12.12, or if any party or any attorney fails to make a timely appearance at any hearing, settlement conference, status conference or trial, the Court may impose appropriate sanctions against that

party or attorney including but not limited to: a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules; the assessment of attorneys' fees and costs; the levy of sanctions or fines of up to \$200.00 per infraction, payable to the clerk of the Court unless otherwise ordered; the issuance of citations or bench warrants; or any calendar action deemed appropriate in the Court's discretion. *(Effective 5/19/98)*

**RULE 12.12.6 REFERENCE TO REFEREE OR SPECIAL MASTER**

Pursuant to Probate Code Section 1000 providing that the rules of practice in civil actions apply to proceedings under the Probate Code, the Court may refer any matter to a referee (sometimes referred to as a "special master") under Code of Civil Procedure Sections 638-645.1 in the manner provided therein. *(Effective 5/19/98)*

**RULE 12.13 MISCELLANEOUS PETITIONS**

**RULE 12.13.1 PETITION FOR FAMILY ALLOWANCE**

**12.13.1.1**

A petition for family allowance, if made before the filing of the inventory, ordinarily may be presented ex parte. However, if the petitioner is someone other than the executor or there is a dispute as evidenced by papers on file in the proceedings or there is a request for special notice, then all other parties must be notified in person or by telephone at least 48 hours in advance of the time and place where the application for the ex parte order will be made. The petition, together with the court file, must be presented by the attorney requesting the ex parte order. Ordinarily, the order will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six (6) months.

**12.13.1.2**

If the application is made more than six (6) months after the personal representative has qualified, it should be noticed and placed on the calendar.

**12.13.1.3**

Subsequent orders will be limited to a definite period, usually not to exceed twelve (12) months. It is the policy of this Court not to make orders for family allowance for an unlimited period.

*(Effective 5/19/98)*

**RULE 12.13.2 PETITIONS FOR INSTRUCTIONS (PROBATE CODE SECTION 9611)**

**12.13.2.1**

The use of petitions for instructions by personal representatives pursuant to Probate Code Section 9611 is limited to those matters where no other procedure is available.

**12.13.2.2**

The Court is without power to instruct the manner in which an estate should be distributed. This can be done only on distribution or by a petition to determine entitlement (See **Estate of Thramm**, 67 Cal. App. 2d 657 (1945)).

**12.13.2.3**

Except as provided in Probate Code Sections 850 et seq., ordinarily the Probate Court is without jurisdiction to try the title to property as between the estate and other parties. Therefore, on a petition for instructions, pursuant to Probate Code Section 9611, the Probate Court cannot instruct the personal representative that specific property is not the property of the estate and should be delivered to a specified person.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.13.3 PETITIONS FOR NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS**

**12.13.3.1**

If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the Court, the Court will on its own motion, supported by an affidavit or declaration, make a nunc pro tunc order correcting the mistake.

**12.13.3.2**

The nunc pro tunc order should not be in the form of a complete amended order but should be in substantially the following form: "On the Court's own motion, to correct a clerical error, the

---

(identify the order to be corrected giving the title and date thereof)

is amended by striking the following:

---

(here set out the matter to be eliminated)

and by inserting in lieu thereof the following:

---

(here set out the correct matter)."

**12.13.3.3**

The original order shall not be physically changed by the clerk, but shall be used in connection with the nunc pro tunc order correcting it.

**12.13.3.4**

To prevent further errors, not less than a complete clause or sentence should be stricken, even if the order is intended to correct only one word or a figure. Reference should not be made

to page and line number of a written order intended to be changed, because the number of lines may vary on various copies of the same order.

**12.13.3.5**

Declarations in support of a nunc pro tunc order and the proposed order may be submitted ex parte.

*(Effective 5/19/98)*

**RULE 12.13.4 PROCEDURE TO BE FOLLOWED BY A PERSONAL REPRESENTATIVE IN ACTIONS FOR DAMAGES FOLLOWING WRONGFUL DEATH OF DECEDENT OR OTHER ACTIONS THAT SURVIVE THE DEATH OF THE DECEDENT**

**12.13.4.1**

Ordinarily, special letters are not the proper vehicle for such actions. The petitioner should seek general appointment, even if the cause of action is the only reason for the proceeding, and full notice should be given as in the commencement of all other estate proceedings. However, in appropriate circumstances, the Court in its discretion may instead appoint a Special Administrator for a limited period of time with a termination date specified in the order and subsequently require an appearance at a scheduled hearing date for a status report and/or accounting.

**12.13.4.2**

If a personal representative collects damages arising out of the physical injury of the decedent or covering funeral expenses and costs of last illness, he or she shall hold such money in his or her representative capacity as property of the estate.

**12.13.4.3**

Damages for wrongful death are held by the personal representative as a representative of the statutory beneficiaries and are not part of the estate. (See **Estate of Waits**, 23 Cal. 2d 676 (1944).) The disposition of such damages for wrongful death and the amount of attorneys' fees and costs shall be determined by the Court on a petition pursuant to Probate Code Section 9835.

**12.13.4.4**

In addition to the usual notices given on hearing of such a petition under Probate Code Section 9835, notice should be served by the attorney by mail on the heirs-at-law in the same manner as if each had filed a request for special notice.

**12.13.4.5**

This rule is applicable also to any action by the personal representative under federal law. For further guidance refer to the Code of Civil Procedures, Sections 376 and 377.10 et seq.

*(Effective 5/19/98)*

## **RULE 12.13.5 AFFIRMATION FOR FINAL DISCHARGE**

### **12.13.5.1**

A final discharge of the personal representative is not required by the Court. However, if a final discharge is requested, then the receipts of distributees should relate to the decree of distribution so as to track the assets distributed to each distributee.

### **12.13.5.2**

The personal representative should present an Affirmation for Final Discharge to the Probate Clerk in the appropriate branch location.

*(Effective 5/19/98; Amended 1/1/04)*

## **RULE 12.13.6 MEDI-CAL PETITIONS**

### **12.13.6.1 Appointment of Representative**

1. The Court will ordinarily appoint an attorney as guardian ad litem, acting in propria persona, for all allegedly incapacitated persons from whom property or income is to be transferred, unless such person has counsel. However, if such person requests counsel the Court will appoint counsel rather than a guardian ad litem. The petitioner may apply for appointment of a guardian ad litem by ex parte application. Such petition should include provisions for payment of fees of the guardian ad litem, and his or her attorney if any. The proposed order of appointment may include authority for the guardian ad litem to review and copy relevant medical and other records necessary or useful to represent adequately the person alleged to be incapacitated.

2. In its discretion, the Court may appoint as guardian ad litem, in lieu of an attorney, an agent under a durable power of attorney or trustee of a trust, where such durable power or trust clearly permits the transaction sought and the agent or trustee is free of any potential interest in the transaction.

3. The guardian ad litem representing the person whose property or income is proposed to be transferred shall take into account quality of care issues and those considerations described in Probate Code Section 2583.

### **12.13.6.2 Transfers To Allow Fulfillment of The CSRA and MMMNA**

Orders assisting in the transfer of assets and income from an incapacitated spouse to a community spouse, or to a spouse expected to be a community spouse, to fulfill the community spouse's standard Community Spouse Resource Allowance (CSRA) or standard Minimum Monthly Maintenance Needs Allowance (MMMNA) will ordinarily be granted, assuming the petition for such orders follows applicable statutory requirements and absent a showing of good cause not to grant such orders.

### **12.13.6.3 Transfer of The Home to Spouse**

In considering whether or not to authorize the transfer of an incapacitated spouse's interest in a home to a community spouse, or person who is expected to be a community spouse, the Court will consider all relevant facts, including whether or not the parties have children by prior

marriages, and the potential effect of the transfer on the incapacitated spouse's existing estate plan.

#### **12.13.6.4 Transfers to a Spouse to Enlarge The Standard CSRA or MMMNA**

1. In considering whether or not to authorize a transfer of assets and income from an incapacitated spouse to a community spouse, or to a spouse expected to be a community spouse, and so enlarging the community spouse's standard Community Spouse Resource Allowance (CSRA) or standard Minimum Monthly Maintenance Needs Allowance (MMMNA), the Court may consider the federal statutory provisions for administrative adjustment, described in 42 U.S.C. 1396r-5(e)(2)(B) and 42 U.S.C. 1396r-5(e)(2)(C). Said provisions are as follows:

A. "If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, [\$2267 for 2003, subject to an annual cost of living adjustment], an amount adequate to provide such additional income as is necessary."

B. "If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, [ \$90,660 for 2003, subject to an annual cost of living adjustment], an amount adequate to provide such minimum monthly maintenance needs allowance."

2. If the Court considers the federal statutory provisions indicated in (a) above, the phrase "exceptional circumstances resulting in significant financial duress" will be interpreted on a case-by-case basis, taking into account such matters as described in (c) below.

3. Petitions seeking assistance in the transfer of assets and income from an incapacitated spouse to a community spouse, or to a spouse expected to be a community spouse, to enlarge the community spouse's standard Community Spouse Resource Allowance (CSRA) or standard Minimum Monthly Maintenance Needs Allowance (MMMNA) will be granted only in the discretion of the Court. With regard to such petitions, the Court will consider all relevant facts including the following:

A. If the failure to issue such orders threatens the marriage of the spouses.

B. If the community spouse has special needs, such as the responsibility to care for and support a minor child or incapacitated adult child, housing costs, medical expenses, in-home care costs, insurance, other necessities of life, changed circumstances beyond the control of the community spouse, or other special needs demonstrated to the satisfaction of the Court. The Court may also take into consideration the age of the community spouse, his life expectancy, his employability, and his expected loss of income upon the death of the institutionalized spouse, i.e., from the cessation or reduction in pension benefits received on account of the institutionalized spouse.

C. If failure to issue such orders may impel the community spouse to shelter nonexempt resources through purchase of otherwise purposeless exempt assets.

#### **12.13.6.5 Other Proposed Transfers**

Petitions for transfers to other than the spouse will be handled on a case-by-case basis and will be granted only in the discretion of the Court, based on the particular facts and

applicable law. The Court will ordinarily examine, among other things, the relationship of the parties and the circumstances of the person alleged to be incapacitated. These rules are not intended to be all-inclusive or to preclude other transfers that may be available under applicable law.

#### **12.13.6.6 Procedures Available For Medi-Cal Petitions**

In addition to procedures available under Probate Code Sections 3100 et seq. (Proceeding for a Particular Transaction), and Sections 2580 et seq. (Substituted Judgment), proceedings under Probate Code Sections 4014, 4022, and 4026. (Court Enforcement of Duties of Attorney in Fact) and Civil Code Sections 241 et seq. (Uniform Civil Liability for Support Act) (Family Code Sections 3550, 3900 et seq. and 4800 et seq. eff. 1/1/94) may be brought in this Court.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

#### **RULE 12.13.7 OTHER PETITIONS**

In addition to petitions relating to decedents' estates, conservatorships, and guardianships, petitions relating to the following matters shall also be filed and heard in the Probate Department:

##### **12.13.7.1**

Proceedings to establish fact of death under Probate Code Sections 200 et seq.

##### **12.13.7.2**

Proceedings to establish record of birth, death or marriage under Health and Safety Code Sections 103450 et seq.

*(Effective 5/19/98)*

#### **RULE 12.14 GUARDIANSHIPS OF MINORS**

##### **RULE 12.14.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING**

###### **12.14.1.1**

Notice required by Probate Code Section 1511(b) must be personally served while the notice required by Probate Code Section 1511 (c), (d) and (e) is to be mailed.

###### **12.14.1.2**

Relatives in the second degree include: maternal grandparents, paternal grandparents, parents, brothers and sisters, and any children.

###### **12.14.1.3**

Notice shall 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.

**12.14.1.4**

The Clerk's Office will set a hearing date approximately 60 days after filing to allow time for the Court Investigator's report.

**12.14.1.5**

When filing a petition to establish a guardianship, the attorney of record should receive an Information Packet. Information Packets may be obtained from the Court Investigator's Office or the Executive Officer/Clerk's Office in Oakland, Fremont, Hayward, or Pleasanton. The packet includes the following:

1. Probate Code Section 1513 Proposed Guardian's Information (See Rules 12.14.3.1 and 12.14.3.2 below);
2. Guardianship Screening Pursuant to Probate Code Section 1516 (See Rule 12.14.1.6 below);
3. Instructions for Notice.

**12.14.1.6**

The attorney of record shall complete the Guardianship Screening form and mail it along with a certified copy of the minor's birth certificate to the local social service agency pursuant to the directions on the form.

**12.14.1.7**

In the case of a petition for guardianship of the person by a non-relative not nominated by a parent, notice under Probate Code Sections 1540-1543 shall be mailed at least 45 days prior to the hearing date to:

1. The Director of Social Services  
744 "P" Street, M.S. 19-31  
Sacramento, CA 95814
2. Guardianship Unit - J-533  
Child Protective Services  
P.O. Box 1769  
Oakland, California 94604-1769

**12.14.1.8**

A declaration of due diligence is required where the petitioner cannot determine the name or address of a relative or party to whom notice is required. The declaration must specify all efforts undertaken to identify and locate such relative or party. The petitioner should check the following and state the results in the declaration: telephone directory, directory assistance, relatives and friends, former employers, and last known address.

**12.14.1.9**

Pursuant to Probate Code Section 1543, if it appears that adoption proceedings are pending, letters of guardianship will not be issued nor the hearing permitted until the agency investigating the adoption has filed its report.

**12.14.1.10**

Guardianships are subject to the provisions of the federal Indian Child Welfare Act (ICWA). If a proposed ward is a member of a tribe or eligible for enrollment as a member of a tribe, counsel or the petitioner should provide notice to the tribe and the Secretary of the Department of the Interior as required by ICWA.

**12.14.1.11**

The proposed ward and the proposed guardian must attend the hearing to establish a guardianship of a minor.

*(Effective 5/19/98; Amended 7/1/99, 1/1/02, 7/1/02, and 1/1/04)*

**RULE 12.14.2 CONTESTED GUARDIANSHIPS**

**12.14.2.1**

If it becomes apparent at the scheduled hearing that a contest over guardianship of the person of the minor will occur, the Court will retain jurisdiction over the guardianship of the estate and will refer the question of the contested guardianship of the person of the minor to the appropriate Family Law Department for adjudication and referral to Family Court Services.

**12.14.2.2**

For procedure in the event of a contest involving the guardianship of the estate, see Rule 12.12. The Court Investigator's Office must receive a copy of all contested petitions.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.14.3 COURT INVESTIGATOR OR SOCIAL SERVICES**

**12.14.3.1**

The Court Investigator's Office conducts an investigation on all petitions to establish a guardianship where the proposed guardian is a relative. In these cases, send the form entitled "Proposed Guardian's Information Sheet" to the Court Investigator's Office. See Probate Code Section 1513(g) for the definition of relative.

**12.14.3.2**

Where the proposed guardian is a non-relative, send the form entitled "Proposed Guardian's Information Sheet" to Child Protective Services. Any delay may cause a continuance. See Probate Code Section 1513(g) for the definition of relative.

**12.14.3.3**

Once the guardianship is established, the Court Investigator's Office assists the Court in reviewing guardianships of the person and the estate. Counsel and guardians shall cooperate fully with the Court Investigator's Office.

**12.14.3.4**

The Court Investigator's Office shall be provided with a copy of all petitions to terminate a guardianship.

**12.14.3.5**

Assessments for the Court Investigator's Reports shall be paid to Central Collections, 1221 Oak Street, 2<sup>nd</sup> floor, Oakland, California 94612, pursuant to the directions on the back of Assessment. If an application to proceed "in forma pauperis" has been granted by the court no assessment will be prepared by the Court Investigator. Any request for an order to waive the assessment once it has been filed must follow the procedure for "in forma pauperis."

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.14.4 TEMPORARY GUARDIANSHIPS**

**12.14.4.1**

All petitions for appointment of a temporary guardian should be submitted by ex parte application. The petition and all supporting documents are forwarded electronically by the Clerk's Office to the Court Investigator for review. In order for a petition to be reviewed by the Court, all notices required by Probate Code §2250 must be provided and proof of service filed. If the petition requests that notice be dispensed with "good cause" must be shown. The petition must fully address the need for the temporary guardianship.

If the court determines that a hearing on the petition for a temporary guardianship is necessary, notice will be sent by the court to the attorney and petitioner. Notice of that hearing must then be given, to those required to receive notice, by the attorney and/or the petitioner.

If the request for a temporary guardianship is granted ex parte 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. Notice of that hearing must then be given, to those required to receive notice, by the attorney and/or the petitioner.

**12.14.4.2**

For good cause, based upon a declaration of the petitioner set out in the petition, the Court will shorten the time required for notice. The Judicial Council form of Order Prescribing Notice (Probate) should be submitted with the petition. (Probate Code Section 2250(c).)

**12.14.4.3**

Ordinarily the Court will require a bond for temporary guardians of the estate.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.14.5 INDEPENDENT EXERCISE OF POWERS**

No powers specified in Probate Code Section 2591 will be granted in the absence of an adequate showing that the grant of each power requested is needed to administer the estate and that the grant of such power is for the advantage, benefit and best interest of the estate.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.14.6 CONDITIONS FOR APPOINTMENT OF INDIVIDUAL GUARDIANS**

**12.14.6.1 Bond of Guardian (see Rule 12.14.11 below)**

**12.14.6.2 Execution of Duties of Guardian**

Before Order Appointing Guardian will be signed, individual guardians shall complete and file with the Executive Officer/Clerk's Office Duties of Guardian (GC-248). The form may be signed and filed in advance of, or at, the hearing on appointment of the guardian. *(Effective 5/19/98, Amended 1/1/02)*

**RULE 12.14.7 INVENTORY AND APPRAISAL**

**12.14.7.1**

An inventory shall 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 there are no assets in the hands of the guardian, the inventory should so indicate.

**12.14.7.2**

After-acquired or newly discovered property must be inventoried and appraised pursuant to Probate Code Section 2613.

**12.14.7.3**

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.

**12.14.7.4**

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

*(Effective 5/19/98)*

**RULE 12.14.8 ACCOUNTS IN GUARDIANSHIP PROCEEDINGS**

**12.14.8.1 Accountings**

1. In addition to the requirements under Section 1060 et seq. of the Probate Code, the account shall detail all receipts and all disbursements of the fiduciary. If an item is not self-explanatory, an explanation must appear either in the account or in the report accompanying the account. Accounts shall conform to the requirements set forth in Rule 12.9. Receipts shall indicate the date of receipt, source and amount. It is not acceptable to show a lump sum amount for a particular source that pays more frequently than annually. Disbursements shall indicate date of expenditure, expense, purpose and amount.

2. No accounts are required if the principal receipts of the guardianship consist of "Public Benefit Payments" and if there is an order dispensing with further accountings. The petition requesting such an order must be set for a noticed hearing. Petitioner must show that all conditions required by law have been satisfied. (See Probate Code Section 2628.) Petitioner must nevertheless keep records as are necessary to prepare accounts as may be required.

If the petitioner is requesting an order under 2628 due to depletion of funds, an accounting up to the requested date of the 2628 order will be required.

#### **12.14.8.2 Frequency of Accounts**

1. Guardianship accounts must be filed after the first anniversary of the establishment of the guardianship and biennially hereafter. The account shall be filed within sixty (60) days after the anniversary date. The attorney of record will be notified regarding the required accounting through a letter from the Court Investigator.

2. The Court may require more frequent accounts or, upon a properly noticed petition, dispense with accountings that comply with Probate Code Section 2628.

3. Successor guardians shall file an accounting one (1) year after the successor appointment date and biennially thereafter.

4. 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.

5. Counsel are referred to Probate Section 2620(b) regarding requirement for two separate accountings for termination following death of ward.

#### **12.14.8.3 Reports Accompanying Accounts**

The report accompanying an account, in addition to Probate Code Section 1064 requirements, shall contain:

1. A statement of the age, health, activity 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; and

3. The following allegations:

- A. 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 (Probate Code §2111.5);
- B. 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 (Probate Code §2111.5);
- C. 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 §2351 (d) or §2401(c);
- D. 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 §2359(c)(2) and §2403(c)(2).

#### **12.14.8.4 Waiver of Accounts**

If the minor's estate consists of cash held in a blocked account, with a receipt filed with the court, annual and biennial accountings will ordinarily be waived. If withdrawals have been made pursuant to a court order periodic accountings may be required.

#### **12.14.8.5 General Information**

1. When a final account is filed, notice of the hearing and a copy of the account must be served upon the ward not less than fifteen (15) days before the hearing. If a final account is waived by the former minor, he or she must be present in court at the hearing to approve the waiver of final account.

*(Effective 5/19/98; Amended 7/1/99, 1/1/02, 7/1/02, 1/1/02, and 1/1/04)*

### **RULE 12.14.9 ORDERS FOR SUPPORT**

#### **12.14.9.1**

In all cases where it is intended that guardianship funds be used for the ordinary expenses of supporting a minor and there is a parent living who has the obligation to support the minor, the guardian shall obtain court approval prior to the expenditure of funds for that purpose (Probate Code Section 2422). If the minor's parent or parents are deceased, the guardian shall 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.

#### **12.14.9.2**

A petition for authority to expend funds for support may be presented at the same time as the petition for appointment of a guardian or any report of the guardian, but should be contained in a separate petition.

#### **12.14.9.3**

The petition shall 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.

#### **12.14.9.4**

Any support order may be re-examined upon the settlement of the account of the guardian.

#### **12.14.9.5**

The expenditure of funds, including the purchase of items of personal property, must be for the support, maintenance and education of the ward alone. If the purchase will also benefit a person or persons in addition to the ward, then the guardian must obtain specific court authority for the expenditure. Failure by the guardian to obtain specific court authority for the

expenditure ordinarily will result in a surcharge against the guardian for the expenditure so made.

*(Effective 5/19/98; Amended 1/1/04)*

## **RULE 12.14.10 ALLOWANCE OF FEES IN GUARDIANSHIP PROCEEDINGS**

### **12.14.10.1**

No fees will be ordered paid in guardianship proceedings until the filing of the inventory, but in no event until the expiration of 90 days from the issuance of letters pursuant to Probate Code Sections 2640-2642.

### **12.14.10.2**

Guardians of persons or estates or both and attorneys may petition the court for just and reasonable compensation earned to the date of the filing of the petition. The petition for compensation shall set forth the hours spent and services performed by the guardian and the attorney (and paralegal).

At the time of filing the first accounting, the guardian and attorney (and the attorney on behalf of the paralegal) may petition the Court for compensation, or additional compensation earned from the date of a prior award, by setting forth the hours spent and the services performed. Ordinarily, reasonable compensation for guardians shall not exceed \$20-\$25 per hour.

### **12.14.10.3**

A declaration shall be filed, detailing the hours spent and the services provided, to enable the court to determine the reasonableness of the fee request. If the court deems necessary, it may request the submission of timesheets. In the absence of a detailed declaration, the Court will ordinarily award the following compensation to the guardian and attorney:

**1.** For services rendered during each year by a guardian, the Court will allow an amount equal to one percent (1%) of the value of the estate.

**2.** For services rendered during the first year by the attorney for a guardian the Court will allow an amount equal to one percent (1%) of the inventoried value of the estate. For services during any subsequent year, the attorney will be allowed an amount equal to one-half (1/2) of one percent (1%) of the value of the estate at the date of each accounting.

**3.** If the application of the guideline fees for guardians and attorneys appears to exceed a reasonable amount for services rendered, the Court may require additional documentation and justification and may reduce the fees in appropriate cases. The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services "extraordinary."

**4.** In the event the attorney for a guardian performs some of the administrative and bookkeeping functions normally performed by the guardian, the attorney may be awarded a larger amount of the combined fees and the guardian allowed a smaller portion thereof so that the total compensation awarded is no larger than that provided for under the guidelines set forth above.

**12.14.10.4**

Where all or a portion of the fee awarded exceeds cash on hand in the estate, the Court may, in appropriate circumstances, issue its order imposing a lien for fees on any or all of the assets in the estate. Ordinarily, enforcement of the lien will be deferred until the assets of the estate subject to the lien have been liquidated for reasons other than the satisfaction of the unpaid fee.

**12.14.10.5**

To be valid, contingent fee contracts with an attorney require prior court approval. It is advisable for the attorney to petition under Probate Code Section 2644 prior to rendering services.

**12.14.10.6**

The title of the petition embodying an application for the payment of fees and of the notice of hearing of such petition shall include a reference to the request.

**12.14.10.7**

Compensation to an attorney representing a minor may be ordered at the conclusion of the hearing on the appointment of the guardian.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.14.11 BOND OF THE GUARDIAN**

**12.14.11.1**

Bond of the guardian may be reduced by deposit of assets into blocked accounts (See Rule 12.5.2.1).

**12.14.11.2 Bond Increase**

The Court will entertain petitions to increase bonds ex parte. When the bond of a guardian must be increased, the Court favors the filing of an additional bond rather than the filing of a substitute bond.

**12.14.11.3 Bond Decrease**

The Court requires that petitions to reduce bonds must be calendared and notice thereof given to all interested parties. When liability of a guardian's bond is to be decreased, the Court favors the use of an order decreasing liability on the existing bond rather than the filing of a substitute bond (See Probate Code Sections 2329 and 2454).

*(Effective 5/19/98; Amended 1/1/02)*

**RULE 12.14.12 INVESTMENT BY GUARDIAN**

**12.14.12.1**

Court approval of all investments of the guardian is required except for those investments described in Probate Code Section 2574. The guardian may seek court authorization even for those investments (Probate Code Section 2574(c)). If a petition is filed for authority to invest, the Court ordinarily will dispense with the requirement that notice be given if such a request is made in the petition or in a separate declaration. Counsel should supply to the Court a proposed "Order Dispensing Notice" as prescribed by the Judicial Council. (See Probate Code Sections 1460(b) and (e)).

**12.14.12.2**

If a request for special notice has not been filed, a petition to invest may be heard ex parte.

**12.14.12.3**

The standard provided in Probate Code Section 16040(b) for investments by trustees will be the standard applied by the Court in authorizing proposed investments by guardians. The Court does not act as an investment counselor but does require that the investments be prudent and in keeping with size and character of the minor's estate. Investments in small estates should be limited to those not likely to fluctuate in value. Larger guardianship estates may be diversified to permit a part of the estate funds to be invested in securities likely to yield higher growth. Investments in existence at the time of the creation of the guardianship usually may be maintained.

**12.14.12.4**

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

**12.14.12.5**

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

**12.14.12.6**

Investments in real estate, either by purchases or encumbrances, will not be approved unless supported by an appraisal by the Probate Referee regularly appointed in the guardianship proceeding, and guardians ordinarily will not be authorized to purchase real estate except for cash.

**12.14.12.7**

Purchase of life insurance on a minor's life will not ordinarily be authorized.

*(Effective 5/19/98)*

**RULE 12.14.13 APPOINTMENT OF SUCCESSOR GUARDIAN**

When filing a petition for a successor guardianship of the person, estate, or both person and estate, send a copy of the petition for successor appointment to the Court Investigator's office in order to determine if an investigation and report will be required. Successor guardianship petitions must be set for hearing by the clerk approximately 60 days after the filing date to allow enough time for any required investigation. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.14.14 APPOINTMENT OF LEGAL COUNSEL, GUARDIANSHIP**

If the court determines it would be in the best interests of the minor, the court may appoint private counsel to represent the minor, or the interests of the minor, in an existing guardianship or in a petition to appoint a guardian of the person or estate pursuant to Probate Code Section 1470. Said private counsel shall not be retained by any party to the contest. The rights, duties and responsibilities of the attorney for the minor in a contest regarding guardianship of the person shall include those specified in Family Code Sections 3150 et seq. Appointment of counsel by the court is made in the following manner:

1. If the petition is to appoint a guardian of the person, or in an existing guardianship of the person only, an attorney from the COURT APPOINTED ATTORNEYS PROGRAM is used;
2. If the petition is to appoint a guardian of the person and estate or the estate only, or in an existing guardianship of the estate, an attorney from the ALAMEDA COUNTY LAWYER REFERRAL SERVICE is used;

The appointment will be made by the court either as attorney or guardian ad litem, acting in pro per.

If the ward, or proposed ward, has retained counsel independently, the representation is subject to approval by the Court. *(Effective 5/19/98; Amended 1/1/02 and 1/1/04)*

**RULE 12.14.15 DISCLOSURE OF RELATED PROCEEDINGS**

The Petitioner shall disclose, by separate declaration, any knowledge of 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. *(Effective 5/19/98)*

**RULE 12.15 CONSERVATORSHIPS**

**RULE 12.15.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING**

**12.15.1.1**

In addition to Probate Code Section 1822 requirements, notice shall be mailed to any persons reasonably known to be nominated as Conservator by the proposed Conservatee under a Durable Power of Attorney for Health Care, Durable Power of Attorney for Property Management, or any other written nomination of conservator.

**12.15.1.2**

Upon filing of a petition for appointment of a conservator, the clerk shall set the same 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 shall be filed showing no service. Service of a citation cannot ordinarily be waived.

**12.15.1.3**

The clerk's office will set the matter for hearing no sooner than forty-five (45) days from the filing date to allow time for the court investigator's report.

**12.15.1.4**

A declaration must be given setting forth the efforts made to locate the address of any person entitled to notice for whom such address information is incomplete (See Rule 12.14.1.8 for the requirements of such declarations of due diligence).

**12.15.1.5**

The proposed conservator must attend the hearing for appointment.

**12.15.1.6**

If the proposed conservatee's appearance is to be waived due to medical inability to attend, the medical affidavit must specifically state the medical and physiological reasons the proposed conservatee cannot attend the court hearing (See Probate Code Section 1825 and especially note section (c)).

**12.15.1.7**

If the proposed conservatee is developmentally disabled pursuant to Probate Code Section 1420, the Court will routinely require a Regional Center Assessment and appoint counsel to represent the proposed conservatee at the hearing to establish a conservatorship. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.15.2 CONTESTED CONSERVATORSHIPS**

For procedure in the event of a contest, see Rule 12.12. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.15.3 COURT INVESTIGATOR**

**12.15.3.1**

Copies of all petitions for appointment of a conservator are electronically sent to the Court Investigator by the Clerk's Office when filed. Counsel or the petitioner should contact the Court Investigator within 10 days after filing to make sure the Court Investigator has received notice of the petition.

All correspondence to the Court Investigator should be mailed to 125 12<sup>th</sup> Street, Suite 390, Oakland, CA 94607. The Court Investigator's phone number is 510-272-6010 and the FAX number is 510-451-1708.

**12.15.3.2**

The petitioner is not required to submit an order appointing a Court Investigator pursuant to Probate Code Section 1454. There is a general order in the minutes of the Court appointing

the Alameda County Court Investigator as the investigator for the Court in all cases under Division 4 of the Probate Code requiring the appointment of such an investigator.

**12.15.3.3**

The court investigator may prepare a report when the proposed conservatee is the petitioner or has nominated a conservator.

**12.15.3.4**

The Court Investigator must be informed immediately of any change of address for the conservatee, the conservator or any attorney of record. This may be accomplished by submitting a change of address form.

**12.15.3.5**

An endorsed-filed copy of each of the following must be sent to the Court Investigator's office:

1. General plan;
2. Inventory and appraisal;
3. Status reports;
4. Petition for Termination of conservatorship;
5. On transfers to Alameda County or out of Alameda County, provide the Court Investigator's office with a copy of the transfer order;
6. Declarations responding to questions raised in a Court Investigator's report.

Accountings, petitions for exclusive medical authority, petitions, or appointment of a successor conservator or co-conservator, and petitions for sale of real property are sent electronically to the Court Investigator by the Clerk's Office when filed. Counsel should contact the Court Investigator within 10 days after filing the above petitions to verify the Court Investigator has received notice.

The Court Investigator will notify counsel if a hard copy of an accountings is needed.

**12.15.3.6**

Court Investigator assessments for reports pursuant to Probate Code Section 1826 shall be paid prior to the hearing on the general plan. All other assessments shall be paid prior to approval of the next accounting. Probate Code Section 1851.5 permits the court to waive or defer such fee in case of hardship. Assessments will be billed to the estate or, where applicable, to a trust where the conservatee is a beneficiary. Conservator shall provide the Court Investigator's Office with the current address of the trustee of any such trust.

**12.15.3.7**

Assessments shall be paid to the Executive Officer/Clerk's Office prior to the hearing date. (See back of Assessment for complete instructions.)

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.15.4 TEMPORARY CONSERVATORSHIP**

**12.15.4.1**

Ordinarily, no petition for the appointment of a temporary conservator will be considered by the Court prior to the filing of a petition for appointment of a permanent conservator.

**12.15.4.2**

The petition for appointment of a temporary conservator may be brought ex parte, provided that the provisions for notice to proposed conservatee of Probate Code Sections 2250(c) are satisfied, either by giving notice to the proposed conservatee or by submission of a declaration showing facts sufficient to allow the Court to determine that good cause exists to eliminate or alter the notice requirements.

1. The court investigator reviews all petitions for appointment of a temporary conservator. It is not necessary to provide the Court Investigator with copies of the petition and supporting documents. The Clerk's Office will forward the documents electronically to the Court Investigator

2. If the attorney is informed that the petition for appointment of a permanent conservator will be contested, all known potential objectors shall be notified at least 48 hours in advance of the time and place the petition for appointment of the temporary conservator will be presented. However, if facts are found which make it clear that the notice required by this section would tend to adversely affect the conservatee or the conservatee's estate, notice to potential objectors may be waived upon a showing of exigent circumstances.

**12.15.4.3**

Ordinarily the Court will require a bond for temporary conservators of the estate.

**12.15.4.4**

If independent powers are sought pursuant to Probate Code Sections 2590-2591, refer to Rule 12.15.5 below.

**12.15.4.5**

Letters of temporary conservatorship expire on the date of the hearing on the appointment of the permanent conservator or thirty (30) days after appointment of the temporary conservator, whichever is earlier, unless the Court extends the termination date pursuant to Probate Code Section 2257.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.15.5 INDEPENDENT EXERCISE OF POWERS**

No powers specified in Probate Code Section 2591 will be granted in the absence of an adequate showing that the grant of each power requested is needed to administer the estate, and that the grant of such power is for the advantage, benefit and best interests of the estate.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.15.6 CONDITIONS FOR APPOINTMENT OF INDIVIDUAL CONSERVATORS**

**12.15.6.1 Bond of Conservator**

(See Rule 12.15.11 below.)

**12.15.6.2 Duties of Conservator**

Prior to the hearing for appointment of conservator, the proposed conservator is to purchase the "Handbook For Conservators" along with the "Local Supplement to Handbook For Conservators" at the Executive Officer/Clerk's Office and complete the "Duties of Conservator" form (Judicial Council form GC-348). The form must be filed prior to the hearing for appointment of conservator. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.15.7 INVENTORY AND APPRAISAL AND GENERAL PLAN**

**12.15.7.1**

At the hearing to appoint the conservator, the court will calendar a status hearing within 120 days. No appearance is required at such hearing and the matter will be dropped so long as the Court Investigator assessment has been paid (or a waiver obtained), the Inventory and Appraisal and General Plan have been filed and served on the Court Investigator, counsel for the conservatee, and any person requesting special notice, and there are no objections raised to the General Plan. Otherwise an appearance will be required.

**12.15.7.2**

The Inventory and Appraisal must comply with Rule 12.6. Strict compliance with Probate Code Section 2610 is required.

**12.15.7.3**

An Inventory and Appraisal shall be filed in all cases where there is a conservatorship of the estate, even in a case where relief from the requirement of filing accountings may be sought under Probate Code Section 2628. When there are no assets in the hands of the conservator, the Inventory and Appraisal should so indicate.

**12.15.7.4**

After-acquired or newly discovered property must be inventoried and appraised pursuant to Probate Code Section 2613.

**12.15.7.5**

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

**12.15.7.6**

If the conservatee receives Veterans, Social Security, welfare, or other periodic benefits, the Inventory must indicate the amount each month and the date when payments commenced.

*(Effective 5/19/98; Amended 7/1/99)*

## **RULE 12.15.8 ACCOUNTS IN CONSERVATORSHIP PROCEEDINGS**

### **12.15.8.1 Accountings**

1. In addition to the requirements under Section 1060 et seq. of the Probate Code, the account shall detail all receipts and all disbursements of the fiduciary. If an item is not self-explanatory, an explanation must appear either in the account or in the report accompanying the account. Accounts shall conform to the requirements set forth in Rule 9. Receipts shall indicate the date of receipt, source and amount. It is not acceptable to show a lump sum amount for a particular source that pays more frequently than annually. Disbursements shall indicate date of expenditure, expense, purpose and amount.

2. No accounts are required if the principal receipts of the conservatorship consist of "Public Benefit Payments" and if there is an order dispensing with further accountings. The petition requesting such an order must be set for a noticed hearing. Petitioner must show that all conditions required by law have been satisfied. (See Probate Code Section 2628.) Petitioner must nevertheless keep records as are necessary to prepare accounts as may be required.

3. If the petitioner is requesting an order under 2628 due to depletion of funds, an accounting up to the requested date of 2628 order will be required.

### **12.15.8.2 Frequency of Accounts**

1. Conservatorship accounts must be filed after the first anniversary of the establishment of the conservatorship and biennially thereafter. The attorney of record will be notified regarding the required accounting through a letter from the Court Investigator. The account shall be filed within sixty (60) days after the anniversary date and set for hearing no earlier than forty-five (45) days after the filing date, to allow the court investigator's office to complete its required review pursuant to Probate Code Section 1851.

2. The Court may require more frequent accounts or, upon a properly noticed petition, dispense with accountings that comply with Probate Code Section 2628.

3. Successor conservators shall file an accounting one (1) year after the successor appointment date and biennially thereafter.

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

5. Counsel are referred to Probate Code Section 2620(b) regarding the requirement for two separate accountings for termination following death of conservatee.

### **12.15.8.3 Reports Accompanying Accounts**

The report accompanying an account, in addition to Probate Code Section 1064 requirements, shall contain:

1. A statement of 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; and
3. The following allegations:

- A. 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 (Probate Code §2111.5);
- B. 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 the processing of any documents related to a conservator (Probate Code §2111.5);
- C. 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 §2351(d) or §2401 (c);
- D. whether the conservator has sold, leased or rented any real or personal property of the estate to any person with whom the conservator has a family or affiliate relationship as defined in Probate Code §2359 (c)(2) and §2403 (c)(2).

#### **12.15.8.4 Status Report**

A Status Report will be required by these rules in all conservatorship matters of the person or person and estate. The form will be provided by the Court Investigator's Office along with the first of the month letter indicating an accounting or review of the conservatorship is due.

#### **12.15.8.5 General Information**

1. When a final account is filed, notice of the hearing and a copy of the account must be served upon the conservatee (if not deceased) not less than fifteen (15) days before the hearing.
2. Copies of any amendments to the accounting or any declarations filed in response to issues raised by the Court Investigator in their review of the account shall be sent to the Court Investigator's office.

*(Effective 5/19/98; Amended 1/1/02 and 7/1/02)*

### **RULE 12.15.9 ORDERS FOR SUBSTITUTED JUDGMENT**

#### **12.15.9.1**

Prior court approval is required for any action specified in Probate Code Sections 2580 et seq., such as making gifts or establishing trusts.

#### **12.15.9.2**

A clear factual showing as required by Probate Code Section 2583 must be included in the petition presented to the Court before the matter will be considered.

#### **12.15.9.3**

Notice must be given under Probate Code Section 2581, and such notice may require a prior order dispensing with notice to some persons.

**12.15.9.4**

The Court will ordinarily require the appointment of a guardian ad litem in all petitions for substituted judgment. Counsel should submit an ex parte petition, on the Judicial Council form, for appointment of a guardian ad litem.

*(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.15.10 ALLOWANCE OF FEES IN CONSERVATORSHIP PROCEEDINGS**

**12.15.10.1**

No fees will be ordered paid in conservatorship proceedings until the filing of the inventory, but in no event until the expiration of 90 days from the issuance of letters, pursuant to Probate Code Sections 2640-2642.

**12.15.10.2**

Conservators of persons or estates or both and attorneys may petition the Court for just and reasonable compensation earned to the date of filing the petition. The petition for compensation shall set forth the hours spent and services performed by the conservator and the attorney (and paralegal).

At the time of filing the first accounting, the conservator and attorney (and the attorney on behalf of the paralegal) may petition the Court for compensation, or additional compensation earned from the date of a prior award, by setting forth the hours spent and the services performed. Ordinarily, reasonable compensation for conservators shall not exceed \$20-25 per hour.

**12.15.10.3**

A declaration shall be filed, detailing the hours spent and the services provided, to enable the court to determine the reasonableness of the fee request. If the Court deems necessary, it may request the submission of time sheets. In the absence of a detailed declaration, the Court will ordinarily award the following compensation to the conservator and attorney:

1. For services rendered during each year by a conservator, the Court will allow an amount equal to one percent (1%) of the then-current value of the estate.
2. For services rendered during the first year by the attorney for a conservator the Court will allow an amount equal to one percent (1%) of the inventoried value of the estate. For services during any subsequent year, the attorney will be allowed an amount equal to one-half (1/2) of one percent (1%) of the value of the estate at the date of each accounting.
3. If the application of the guideline fees for conservators and attorneys appears to exceed a reasonable amount for services rendered, the Court may require additional documentation and justification and may reduce the fees in appropriate cases. The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services "extraordinary."
4. In the event the attorney for a conservator performs some of the administrative and bookkeeping functions normally performed by the conservator, the attorney may be awarded a larger amount of the combined fees and the conservator allowed a smaller portion thereof so that

the total compensation awarded is no larger than that provided for under the guidelines set forth above.

**12.15.10.4**

Where all or a portion of the fee award exceeds cash on hand in the estate, the Court may, in appropriate circumstances, issue its order imposing a lien for fees on any or all of the assets in the estate. Ordinarily, enforcement of the lien will be deferred until the assets of the estate subject to the lien have been liquidated for reasons other than the satisfaction of the unpaid fee.

**12.15.10.5**

To be valid, contingent fee contracts with an attorney require prior court approval. It is advisable for the attorney to petition the Court for its approval prior to rendering services.

**12.15.10.6**

The title of the petition embodying an application for the payment of fees and of the notice of hearing of such petition shall include a reference to the request.

**12.15.10.7**

Compensation to an attorney representing a conservatee may be ordered at the conclusion of the hearing on the appointment of the conservator.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.15.11 BOND**

**12.15.11.1**

Bond for an individual conservator of the estate shall not be waived. Under special circumstances, the Court in its discretion may order a reduced bond where the conservatee, having sufficient capacity to do so, has waived or requested a reduced bond amount.

**12.15.11.2**

Bond of the conservator may be reduced by deposit of assets into blocked accounts. (See Rule 12.5.2.1.)

**12.15.11.3 Bond Increase**

The Court will entertain petitions to increase bonds ex parte. When the bond of a conservator must be increased, the Court favors the filing of an additional bond rather than the filing of a substitute bond.

**12.15.11.4 Bond Decrease**

The Court requires that petitions to reduce bonds must be calendared and notice thereof given to all interested parties. When liability of a conservator's bond is to be decreased, the Court favors the use of an order decreasing the liability on the existing bond rather than the filing of a substitute bond. (See Probate Code Sections 2329 and 2454.)

*(Effective 5/19/98)*

**RULE 12.15.12 INVESTMENT BY CONSERVATOR**

**12.15.12.1**

Court approval of all investments of the conservator is required except for those investments described in Probate Code Section 2574. The conservator may seek court authorization even for those investments (Probate Code Section 2574(c)). If a petition is filed for authority to invest, the Court ordinarily will dispense with the requirement that notice be given if such a request is made in the petition or in a separate declaration. Counsel should supply to the Court a proposed "Order Dispensing Notice" as prescribed by the Judicial Council. (See Probate Code Section 1460(b) and (e).)

**12.15.12.2**

If a request for special notice has been filed, a petition to invest may not be heard ex parte.

**12.15.12.3**

The standard provided in Probate Code Section 16040(b) for investments by trustees will be the standard applied by the Court in authorizing proposed investments by conservators. The Court does not act as an investment counselor, but does require that the investments be prudent and in keeping with the size and character of the conservatee's estate. Investments by small estates should be limited to those not likely to fluctuate in value. Larger estates may be diversified to permit a part of the estate funds to be invested in securities likely to yield higher growth. Investments in existence at the time of the creation of the conservatorship usually may be maintained.

**12.15.12.4**

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

**12.15.12.5**

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

**12.15.12.6**

Investments in real estate, either by purchases or encumbrances, will not be approved unless supported by an appraisal by the Probate Referee regularly appointed in the conservatorship proceeding, and conservators ordinarily will not be authorized to purchase real estate except for cash.

**12.15.12.7**

Purchase of life insurance on a conservatee's life will not ordinarily be authorized.

*(Effective 5/19/98)*

**RULE 12.15.13 APPOINTMENT OF SUCCESSOR CONSERVATOR**

The provisions of the Probate Code concerning the duties of the Court Investigator apply whether or not the conservatee will be present at the hearing (contrary to Probate Code Section 2684). The petition will be set for hearing no earlier than 45 days after filing. The Clerk's office will send a copy of the petition electronically to the Court Investigator. The attorney should contact the Court Investigator within 10 days after the petition is filed to make sure the Court Investigator has received notice of the petition. *(Effective 5/19/98; Amended 1/1/04)*

**RULE 12.15.14 CAPACITY TO GIVE INFORMED CONSENT FOR MEDICAL TREATMENT**

**12.15.14.1**

If the conservatee is determined unable to attend the court hearing on a petition to determine incapacity to give informed consent to medical treatment, the matter shall be set for hearing forty-five (45) days after the filing date to allow time for the Court Investigator's Report. Probate Code Section 1894.

**12.15.14.2**

When a petition for exclusive medical authority is filed, the Clerk's Office will electronically transmit a copy of the petition to the Court Investigator. Counsel should contact the Court Investigator within 10 days after the petition is filed to make sure the Court Investigator has received notice of the petition.

*(Effective 5/19/98; Amended 7/1/99 and 1/1/04)*

**RULE 12.15.15 TERMINATION OF CONSERVATORSHIPS**

**12.15.15.1**

The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code Section 7357, or other provisions of law, does not terminate a conservatorship.

**12.15.15.2**

When the conservatorship is being terminated for reasons other than death, the attorney of record shall set the termination hearing at least 45 days in advance in order to allow time for a Court Investigator report.

**12.15.15.3**

If the conservatorship is being terminated because the conservatee is now able to handle his/her own affairs, the conservatee's attendance at the court hearing is required.

**12.15.15.4**

Upon termination due to death, if distribution of assets is to be under Section 13100, a copy of the declaration under Probate Code Section 13100 signed by each beneficiary is required prior to granting an order permitting the conservator to distribute assets in accordance with that section.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.15.16 PRIVATE PROFESSIONAL CONSERVATORS**

**12.15.16.1 Registration**

All parties who fit the definition of a Private Professional Conservator as described in Probate Code Section 2341 must register with the Court Investigator's Office located at 125 12<sup>th</sup> Street, Suite 390, Oakland, California 94607. There is a registration fee. Contact the Court Investigator for the current fee rate. Two sets of fingerprint cards are required when registering. Any petition to appoint a conservator by a Private Professional Conservator must include his or her registration number and the date he or she registered. No petition by a Private Professional Conservator will be heard unless he or she is currently registered. Proof of compliance with the Statewide Registry shall be submitted to the Court Investigator's Office at the address above.

**12.15.16.2 Fees**

Compensation shall be based on time spent, the nature of the services, and the value of those services to the conservatee. One suggested format is included in these local rules to group services into categories and itemize within those categories. (See Form 12.18.5.) The format is not mandatory and is not a substitute for narrative explanation. The Court will ordinarily not approve fee requests for travel time, or allow reimbursement of mileage or telephone costs.

*(Effective 5/19/98, Amended 7/1/99 and 1/1/04)*

**RULE 12.15.17 APPOINTMENT OF LEGAL COUNSEL, CONSERVATORSHIP**

Appointment of legal counsel pursuant to Probate Code Sections 1470 and 1471 is made in the following manner:

1. If the conservatee or proposed conservatee is developmentally disabled or indigent the Alameda County Public Defender is appointed;
2. If the conservatee or proposed conservatee is not indigent, (1) Legal Assistance for Seniors is appointed if the conservatee or proposed conservatee is over the age of 60 years, or (2) if under the age of 60 an attorney's name is obtained through the ALAMEDA COUNTY LAWYER REFERRAL SERVICE.

If a conservatee or proposed conservatee has retained legal counsel independently, the representation is subject to approval by the Court. *(Effective 5/19/98; Amended 1/1/02)*

**RULE 12.15.18 DISCLOSURE**

The Petitioner shall 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. *(Effective 5/19/98)*

**RULE 12.16 TRUSTS**

**RULE 12.16.1 TRUSTEE'S ACCOUNTS**

**12.16.1.1**

Accounts filed by trustees under authority of Probate Code Sections 17200 and 17301 shall conform to the requirements contained in Rule 12.9.

**12.16.1.2**

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

**12.16.1.3**

The account shall set forth specifically the period covered by the account.

*(Effective 5/19/98)*

**RULE 12.16.2 PRINCIPAL AND INCOME**

Receipts and disbursements shall be allocated between principal receipts and disbursements and income receipts and disbursements (See Probate Code Sections 16300 et seq.). *(Effective 5/19/98)*

**RULE 12.16.3 TIME FOR PAYMENT OF TRUSTEE'S FEE**

**12.16.3.1**

Ordinarily, trustees' fees shall not be paid until there has been an order of court fixing the same and settlement of an account.

**12.16.3.2**

The payment of trustees' fees on account may be granted in certain special situations.

*(Effective 5/19/98)*

**RULE 12.16.4 ALLOWANCE OF FEES IN TRUSTS**

**12.16.4.1**

If the Will or trust instrument contains provisions for a trustee's compensation, the trustee shall receive the designated compensation. On a proper showing the Court ordinarily will allow a greater compensation. (Probate Code Section 15680.) In the absence of any provisions in the Will or trust instrument for compensation of the trustee's attorney, the attorney

ordinarily will be awarded an amount equal to approximately one-third of the trustee's compensation.

**12.16.4.2**

Where the Will or trust document is silent and the trustee and/or the trustee's attorney have elected not to support a fee application with a declaration with itemized detail of work and hours, the Court ordinarily will award the trustee an amount equal to one percent (1%) of the value of the trust assets annually and the trustee's attorney an amount equal to approximately one-third (1/3) of the trustee's fee.

**12.16.4.3**

In the event the attorney has performed bookkeeping and other services for an individual trustee, the Court may award the trustee's attorney a larger compensation and the individual trustee a lesser compensation; ordinarily, the total may not exceed the combined total of fees set forth above.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.16.5 FREQUENCY OF ACCOUNTS**

It is recommended that trustees file accounts not less than once every two (2) years. The fact that an account covers a lengthy period of time will not constitute grounds for deviation from any of the normal requirements of an account. *(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.16.6 NOTICE TO BENEFICIARIES**

**12.16.6.1**

All accountings and reports involving testamentary trusts shall set forth the names and last known addresses of all beneficiaries, whether their interests be vested or contingent. Attention is directed to Probate Code Sections 15804 and 17203.

**12.16.6.2**

Income beneficiaries and remainder beneficiaries, vested or contingent, who are entitled to notice, shall receive thirty (30) days notice by mail of the hearing date on the account, and that fact shall be reflected on the proof of service (See Probate Code Section 17203).

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.16.7 INSTRUCTIONS TO TRUSTEE**

When the trustee seeks instructions to exercise a power not conferred by the Will, a copy of the petition shall be mailed to all beneficiaries, and a guardian ad litem may be appointed if necessary (See Probate Code Section 1003). *(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.16.8 JURISDICTION OVER INTER VIVOS AND INSURANCE TRUSTS**

**12.16.8.1**

Pursuant to Probate Code Section 17000, the Court has jurisdiction over inter vivos trusts, and testamentary trusts which are not automatically subject to the Court's supervision, upon the petition of a trustee, beneficiary or remainderman.

**12.16.8.2**

Pursuant to Probate Code Section 6325, the Court has jurisdiction over insurance trusts, before or after payment, upon the petition of the personal representative of the insured's estate, a trustee, or any person interested in the estate or trust.

**12.16.8.3**

Pursuant to Probate Code Section 3604, a petition for establishment of a special needs trust to receive money pursuant to an order under Probate Code Sections 3602(d) or 3611(c) shall be assigned to the Probate Court for review and approval of the terms of the trust and for continuing jurisdiction of the trust.

*(Effective 5/19/98; Amended 7/1/99)*

**RULE 12.16.9 BOND OF THE TRUSTEE**

**12.16.9.1**

Trustees appointed by the Court shall be subject to the same rules as personal representatives pertaining to the posting of bond. *(Effective 5/19/98; Amended 7/1/99 and 1/1/02)*

**RULE 12.17 PETITIONS FOR REMOVAL OF A PERSONAL REPRESENTATIVE, CONSERVATOR, GUARDIAN OR TRUSTEE**

**RULE 12.17.1 PETITION BY BENEFICIARY UNDER A WILL FOR REMOVAL OF PERSONAL REPRESENTATIVE (PROBATE CODE SECTIONS 8500 ET SEQ.)**

After the petition for removal has been filed, the attorney for the petitioner shall prepare and present to the Court an order that a citation issue and directing the Executive Officer Clerk to issue the citation. A copy of the petition shall accompany the request. The attorney must also prepare the citation, on the Judicial Council form, requiring the representative to appear personally, and to show cause why the petition for removal should not be granted and letters revoked. *(Effective 5/19/98)*

**RULE 12.17.2 PETITION BY A WARD, CONSERVATEE, OR SPOUSE, RELATIVE OR FRIEND OF WARD OR CONSERVATEE FOR REMOVAL OF GUARDIAN OR CONSERVATOR (PROBATE CODE SECTIONS 2650 ET SEQ.)**

Upon filing of a petition for removal, the notice procedure of Probate Code Section 2652 shall be followed. If the mode of service on the guardian or conservator as specified in the Code would not be effective to provide actual notice, then an Order Prescribing Notice, or an Order

Dispensing with Notice may be requested by the delivery of the proposed order to the Court, accompanied by a declaration signed by the attorney for the petitioner. *(Effective 5/19/98)*

**RULE 12.17.3 PETITION BY SETTLOR, CO-TRUSTEE, OR BENEFICIARY FOR REMOVAL OF TRUSTEE (PROBATE CODE SECTIONS 15642, 17200(B)(10))**

Upon filing a petition for removal of a trustee, the notice procedure of Probate Code Section 17203 shall be followed. If the mode of service on the trustee as specified in the Code would not be effective to provide actual notice, then an Order Prescribing Notice or Order Dispensing with Notice may be requested by the delivery of the proposed Order to the Court, accompanied by a declaration signed by an attorney for the petitioner. *(Effective 5/19/98)*

**RULE 12.18 RECOMMENDED FORMS**

**RULE 12.18.5 FORMAT FOR REPORT OF CONSERVATOR'S SERVICES**

**SUMMARY OF CONSERVATOR'S HOURS DURING  
THE ACCOUNTING PERIOD FOR THE  
CONSERVATORSHIP OF \_\_\_\_\_**

**I. INVESTIGATION SERVICES (Pre-appointment):**

(Case referral review, family/collateral interview, physician consult, conference with attorneys re conservatorship)

Hours spent: \_\_\_\_\_

**II. INTAKE SERVICES (Post-appointment):**

(Initial visit, placement evaluation, medical consent matters, develop case plan for personal services, change address, notify creditors, correspondence/asset discovery, open conservatorship bank accounts, house search, property safeguard, marshaling of assets (inventorying))

Hours spent: \_\_\_\_\_

**III. PERSONAL SERVICES (Conservatorship of Person):**

(Personal visits, medical consent matters, family/collateral contacts, correspondence/telephone calls, preparation of case plan)

Hours spent: \_\_\_\_\_

**IV. FINANCIAL SERVICES (Conservator of Estate):**

(Estate finance review, case budget preparation, marshaling assets, determine need for personal property disposition, sell property (personal), store property and other disposition, correspondence and telephone calls, review/process medical bills/claims, review for accounting, conference re taxes, house maintenance, court hearings)

Hours spent: \_\_\_\_\_

**V. BOOKKEEPING SERVICES:**

(Receipting of funds, identifying incoming checks, disbursing of funds, identifying incoming bills)

Hours spent: \_\_\_\_\_

**TOTAL HOURS WORKED: \_\_\_\_\_**

*(Effective 5/19/98)*

**RULE 12.19 ENACTMENT OF DUE PROCESS IN COMPETENCY DETERMINATIONS ACT**

**RULE 12.19.1 TESTAMENTARY CAPACITY**

In presenting evidence regarding testamentary capacity and/or undue influence, counsel should be prepared to support the criteria of Probate Code 6100.5 and 6105 with evidence of the presence or absence of mental function deficits as defined by Probate Code 811(a) and to establish linkages, as set forth in Probate Code 811(b) between said deficits, or lack thereof, and the criteria of Probate Code 6100.5 and 6105. *(Effective 5/19/98)*

**Rule 12.19.2 CONTRACTUAL CAPACITY**

In presenting evidence regarding contractual capacity, counsel should be prepared to support the criteria of Civil Code 39 and 40 with evidence of the presence or absence of mental function deficits as defined by Probate Code 811(a), and to establish linkages as set forth in Probate Code 811 (b) between said deficits, or lack thereof, and the criteria of Civil Code 39 and 40. In addition, if certain decisions made by the person who entered the contract of which rescission is being sought are to be considered by the court in determining if the criteria of Civil Code 39 and 40 have been met, counsel should be prepared to present evidence of communication, understanding and appreciation of said decision, as defined by Probate Code 812, and to establish linkages between the criteria of Probate Code 812 and the act(s) involved in the making of the contract. *(Effective 5/19/98)*

**Rule 12.19.3 CONSERVATORSHIP**

A finding that a person meets the criteria of Probate Code 1801 regarding establishment of a conservatorship of the person or estate, must be supported by evidence of at least one mental function deficit as set forth in Probate Code 811(a), and the connection between said deficit(s) and the impairment(s) set forth in Probate Code 1801 as indicated in Probate Code 811(b). In addition, if certain decisions made by the proposed conservatee, whether or not accompanied by acts, are to be considered by the court in determining if the criteria of Probate Code 1801 have been met, counsel should be prepared to present evidence of communication, understanding and appreciation of said decisions, as defined by Probate Code 812 and to establish linkages between the criteria of Probate Code 812 and the criteria set forth in Probate Code 1801. Relevant alleged deficits known at the time the petition filed must be included in the confidential supplemental information allegations. *(Effective 5/19/98)*

**RULE 12.19.4 INFORMED CONSENT FOR MEDICAL TREATMENT**

A finding that a person is unable to give informed consent for medical treatment, in response to a Petition filed pursuant to Probate Code 3201 et seq., Probate Code 813 and Probate Code 1881, must be supported, as required by said statutes, by evidence of Probate Code 811 deficit(s), and the link between said deficit(s) and the inability in question. If a medical declaration is used to present evidence of Probate Code 811 mental function deficits, the current judicial council form, if adopted, shall be used. *(Effective 5/19/98)*

**RULE 12.19.5 OTHER ACTS AND DECISIONS**

In considering the validity of any other decision or act brought before it for review, the court may require evidence of the presence or absence of the criteria set forth in Probate Code 811 and Probate Code 812, and the linkages of said criteria to the decision or act in question.  
*(Effective 5/19/98)*

**ATTACHMENT A**

**APPENDIX TO PROBATE RULES**

**COURTROOM/DEPARTMENT ASSIGNMENTS  
DAY AND TIME OF HEARINGS**

**July 1, 2004**

**Venue:**

In general the proper venue in any probate matter is the Superior Court location within whose geographical limits the decedent was domiciled, the trust is administered, or the minor or proposed conservatee is domiciled as provided in the rules of court.

The geographical limits of the following locations are:

For the Cities of Alameda, Albany, Berkeley, Emeryville, Piedmont and Oakland:

Alameda County Administration Building  
1221 Oak Street  
Oakland, CA 94612

For the Cities and unincorporated areas of Castro Valley, Hayward, San Leandro, and San Lorenzo:

Hayward Hall of Justice  
24405 Amador Street  
Hayward, CA 94544

For the Cities and unincorporated areas of Fremont, Newark, Union City, and Washington Township:

Fremont Hall of Justice  
39439 Paseo Padre Parkway  
Fremont, CA 94538

For the Cities and unincorporated areas of Dublin, Livermore, Pleasanton and Sunol:

Gale Schenone Hall of Justice  
5672 Stoneridge Drive  
Pleasanton, CA 94566

**Telephone Appearance:**

Telephone Appearances are allowed pursuant to Rule 12.1.8.2. Participants may contact *ConferenceCallService* toll free at 1-888-527-7327 to arrange service. Instructions and service request forms are available in the court locations above.

**Calendars:**

The County Administration Building location at:  
1221 Oak Street  
Oakland, CA 94612  
(510) 272-6141

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hears two probate calendars at 9:30 a.m. and 10:30 a.m. every weekday morning except Friday in Department 23. The daily calendars are divided as follows:

On Mondays, Tuesday, and Wednesdays, the GENERAL CALENDAR called at 9:30 a.m. consists of the first hearing for all probate-related matters other than petitions to appoint conservators and guardians, and petitions by the Public Guardian and Public Administrator.

The SPECIAL SETTING CALENDAR called at 10:30 a.m. consists of all matters specially set for hearing by the clerk in Department 23 where it is anticipated the matter can be resolved without testimony in less than fifteen (15) minutes. Additionally, petitions filed to terminate a conservatorship or guardianship are set on this calendar. On both calendars the matters called first are those which have had all procedural notes cleared by the probate examiners.

On Thursday, the 9:30 a.m. calendar is the County Counsel's calendar. All hearings in cases in which the Public Guardian or Public Administrator is a party, is appointed, is to be appointed, or is the petitioner, are to be set for this calendar unless the court otherwise orders.

The CONSERVATORSHIP/GUARDIANSHIP CALENDAR called at 10:30 a.m. consists of the first hearing for all petitions to appoint conservators and guardians filed by private parties and their attorneys. A videotape on the duties and responsibilities of conservators and guardians may be shown at a convenient time.

SHORT CAUSE MATTERS (RULE 12.12) that do not require more than (2) afternoons of trial will ordinarily be heard in Department 23 on the 2:00 p.m. calendar.

**Telephone Calls to the Courtroom Clerk:** Every morning from 8:00 a.m. to 9:30 a.m. and every afternoon (except Fridays) from 2:00 p.m. to 5:00 p.m. at (510) 272-6141. While Court is in session calls will be answered by a recorded message.

**Telephone Calls to the Probate Examiners:** Telephone calls to the Probate Examiners to discuss notes in the file (510) 272-6000 are restricted to 2:00 to 3:30 p.m. on Monday, Tuesday, Wednesday, and Friday. Calls at others times and all day Thursday will be answered by the answering device.

The Probate Examiner's notes for cases on the calendar will be posted on the Alameda County Superior Court DOMAIN Web Page at <http://www.alameda.courts.ca.gov/courts/>

**Pre-granted Matters:** Pre-granted matters are handled as follows:

- (a) Starting at approximately 4:00 p.m. on the day before the hearing, attorneys may call (510) 272-6004 to hear a tape-recorded message announcing all pre-granted matters, late-granted matters and continuances;
- (b) Do not call the Probate Department at any other time to find out if an appearance is required. Wait for the recording. If your matter is not announced on the tape-recorded message, do not call the Probate Department again. You should review the file in person and make an appearance at the court hearing;
- (c) Signed orders in pre-granted matters will be available outside the courtroom on the day of the hearing after it has been established that no objections have been made. All original orders will be automatically filed daily by the Executive Officer/Clerk's

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Office. If endorsed-filed or certified copies of orders are desired, attorneys may so request by supplying copies of orders along with a self-addressed stamped envelope and the proper fee to the Executive Officer/Clerk's Office.

The Hayward Hall of Justice location at

24405 Amador Street  
Hayward, California 94544  
(510) 690-2700

hears two morning probate calendars every Friday at 9:30 a.m. and 10:30 a.m. in Department 23. The GENERAL CALENDAR hears uncontested, contested and sales matters at 9:30 a.m. and the petitions to appoint conservators and guardians are called at 10:30 a.m.

**Telephone Calls to the Courtroom Clerk:** Each Friday from 8:00 a.m. to 9:30 a.m. (510) 272-6141.

**Telephone Calls to the Probate Examiners:** Telephone calls to the Probate Examiners to discuss notes in the files ((510) 272-6000) are restricted to 2:00 to 3:30 p.m. on Monday, Tuesday, Wednesday and Friday. Calls at other times and all day Thursday will be answered by the answering device.

The Probate Examiner's notes for matters on the calendar will be posted on the Alameda County Superior Court DOMAIN Web Page at <http://www.alameda.courts.ca.gov/courts/>

**Pre-granted Matters:** Pre-granted matters are handled as follows:

- (a) Starting at approximately 4:00 p.m. on the day before the hearing, attorneys may call (510) 272-6000 to hear a tape-recorded message announcing all pre-granted matters and continuances;
- (b) Do not call the Probate Department at any other time to find out if an appearance is required. Wait for the recording. If your matter is not announced on the tape-recorded message, do not call the Probate Department again. You should review the file in person and make an appearance at the court hearing;
- (c) Signed orders in pre-granted matters will be available outside the courtroom on the day of the hearing after it has been established that no objections have been made. All original orders will be automatically filed daily by the Executive Officer/Clerk's Office. If endorsed-filed or certified copies of orders are desired, attorneys may so request by supplying copies of orders along with a self-addressed stamped envelope and the proper fee to the Executive Officer/Clerk's Office.

The Gale Schenone Hall of Justice location at

5672 Stoneridge Drive  
Pleasanton, California 94566  
(925) 227-6787

hears one probate calendar at 1:30 p.m. on the first and third Monday of each month in Department 707. This calendar consists of all types of probate matters and is heard by the Judge sitting in Department 707.

**Telephone Calls to the Courtroom Clerk:** Mondays and Fridays during regular business hours at (925) 227-6787.

**Telephone Calls to the Probate Examiners:** Telephone calls to the Probate Examiners ((510) 272-6000) are restricted to 2:00 to 3:30 p.m. on Monday, Tuesday, Wednesday and Friday. Calls at other times and all day Thursday will be answered by the answering device.

The Probate Examiner's notes for matters on calendar will be posted on the Alameda County Superior Court DOMAIN Web Page at <http://www.alameda.courts.ca.gov/courts/>

**Pre-granted Matters:** Pre-granted matters are handled as follows:

- (a) The list of pre-granted and continued matters will be posted on the Alameda County Superior Court Web Page (see above). For counsel who do not have access to the internet, the Probate Examiners will contact counsel by telephone prior to the hearing;
- (b) Do not call the Probate Department at any other time to find out if an appearance is required. Check the Web Page or wait for a telephone call from the Probate Examiner. If your matter is not pre-granted, you should review the file in person and make an appearance at the court hearing;
- (c) Signed orders in pre-granted matters will be available outside the courtroom on the day of the hearing after it has been established that no objections have been made. All original orders will be automatically filed daily by the Executive Officer/Clerk's Office. If endorsed-filed or certified copies of orders are desired, attorneys may so request by supplying copies of orders along with a self-addressed stamped envelope and the proper fee to the Executive Officer/Clerk's Office.

The Fremont Hall of Justice location at

39439 Paseo Padre Parkway  
Fremont, CA 94538  
(510) 795-2388

hears one probate calendar at 2:00 p.m. on the second and fourth Friday of each month in Department 602. This calendar consists of all types of probate matters and is heard by the Judge sitting in Department 602. All initial petitions for appointment of conservator or guardian are set for hearing at 1:30 pm so that the proposed conservator or proposed guardian can view a videotape about conservatorship or guardianship prior to the hearing.

**Telephone Calls to the Office Clerk:** Mondays and Fridays during regular business hours at (510) 795-2388.

**Telephone Calls to the Probate Examiners:** Telephone calls to the Probate Examiners ((510) 272-6000) are restricted to 2:00 to 3:30 p.m. on Monday, Tuesday, Wednesday and Friday. Calls at other times and all day Thursday will be answered by the answering device.

The Probate Examiner's notes for matters on calendar will be posted on the Alameda County Superior Court DOMAIN Web Page at <http://www.alameda.courts.ca.gov/courts/>

**Pre-granted Matters:** Pre-granted matters are handled as follows:

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- (a) The list of pre-granted and continued matters will be posted on the Alameda County Superior Court Web Page (see above). For counsel who do not have access to the internet, the Probate Examiners will contact counsel by telephone prior to the hearing;
- (b) Do not call the Probate Department at any other time to find out if an appearance is required. Check the Web Page or wait for a telephone call from the Probate Examiner. If your matter is not pre-granted, you should review the file in person and make an appearance at the court hearing;
- (c) Signed orders in pre-granted matters will be available outside the courtroom on the day of the hearing after it has been established that no objections have been made. All original orders will be automatically filed daily by the Executive Officer/Clerk's Office. If endorsed-filed or certified copies of orders are desired, attorneys may so request by supplying copies of orders along with a self-addressed stamped envelope and the proper fee to the Executive Officer/Clerk's Office.

*(Effective 7/1/99; Amended 1/1/04 and 1/1/07)*

**ATTACHMENT B**

**CONSERVATORSHIP (PROBATE & LPS) AND  
GUARDIANSHIP FEE GUIDELINES FOR THE PUBLIC GUARDIAN,  
THE COUNTY COUNSEL AND THE PUBLIC DEFENDER**

No fee or charge shall be taken without a prior written order of the Court setting forth the fee or charge.

No fee or charge may be anticipated nor property encumbered without a prior written order of the Court setting forth the fee, charge, and/or encumbrance.

<b>SIZE OF ESTATE</b>	<b>FEE GUIDELINES</b>
\$499 and under	-0-
\$500 - \$999	10% of balance to Public Guardian 8% of balance to County Counsel 8% of balance to Public Defender
\$1,000 - \$9,999	15% of balance, with a maximum of \$900 to Public Guardian 10% of balance, with a maximum of \$700 to County Counsel 10% of balance, with a maximum of \$700 to Public Defender
\$10,000 - \$29,999	9% of balance, with a maximum of \$1,050 to Public Guardian 7% of balance, with a maximum of \$900 to County Counsel 7% of balance, with a maximum of \$900 to Public Defender
\$30,000 - \$49,999	3.5% of balance, with a maximum of \$1,250 to Public Guardian 3% of balance, with a maximum of \$1,000 to County Counsel 3% of balance, with a maximum of \$1,000 to Public Defender
\$50,000 - \$69,999	2.5% of balance, with a maximum of \$1,400 to Public Guardian 2% of balance, with a maximum of \$1,225 to County Counsel 2% of balance, with a maximum of \$1,225 to Public Defender
\$70,000 - \$84,999	2% of balance, with a maximum of \$1,615 to Public Guardian 1.75% of balance, with a maximum of \$1,445 to County Counsel 1.75% of balance, with a maximum of \$1,445 to Public Defender
\$85,000 -- \$159,999	1.9% of balance, with a maximum of \$3,000 to Public Guardian 1.7% of balance, with a maximum of \$2,400 to County Counsel 1.7% of balance, with a maximum of \$2,400 to Public Defender
\$160,000 and above	1.9% of balance, with a maximum of \$4,000 to Public Guardian 1.7% of balance, with a maximum of \$3,000 to County Counsel 1.7% of balance, with a maximum of \$3,000 to Public Defender

- In probate cases there is a case set up and investigation claim of \$1,200 by the Public Guardian and a case set up claim of \$1,000 by County Counsel. These are requested at the time of the general plan and shall only be taken upon written court approval. The

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Public Defender may claim a case set up fee of \$1,000 to be made as provided by Probate Code Section 1472.

- Additionally there may be a claim by the Public Guardian of \$1,000 and by the County Counsel of \$850 on sales of real property. If the Public Guardian seeks an amount more than \$1,000 then the entire amount must be supported by declarations providing detailed information as to the services rendered. The Public Guardian may claim \$250 on sale of personal property of over \$1,000. These claims may be taken only upon written court approval.
- For all estates except for those receiving SSI, an annual bond fee of \$25 will be claimed, plus 1/4 of 1% of the estate in excess of \$10,000 will be claimed and taken only upon written court approval.
- For estates with substantial non-liquid assets, Public Guardian, County Counsel and Public Defender fees will be reserved until such time as the assets are liquidated or until the conservatee is deceased, whichever is sooner.
- For cases requiring extraordinary legal services, County Counsel and the Public Defender may submit itemized billings with the accounts, in declaration form, for fees in excess of the schedule amounts.
- In the final accounts where the conservatees or the wards are deceased, the fee waiver provision is not applicable. The Public Guardian, County Counsel and Public Defender will claim 40%, 30% and 30% respectively of the estate balance up to \$3,000. In cases where the Public Defender is not appointed, the Public Guardian and County Counsel will claim 55% and 45% respectively of the estate balance up to \$2,200. On estates with balances on hand of \$50,000 and over, the Public Guardian, County Counsel and Public Defender will claim fees pursuant to the schedule. In cases where the Public Guardian and County Counsel have followed the Probate Code Section 2631 procedure to liquidate the decedent's estate and pay debts, additional fees of \$500 to the Public Guardian and \$300 to the County Counsel will be claimed. Fees claimed will be taken only upon written court approval.

*(Effective 7/1/99; Amended 1/1/04)*

**ATTACHMENT C**

**PROBATE STANDING TRIAL MANAGEMENT ORDER**

The Probate Court order as follows:

- 1.** Each Counsel and any unrepresented party, shall meet and confer at least three (3) court days before trial pursuant to Rule 12.12.1.5(3).
- 2.** Each Counsel and any unrepresented party, shall prepare an index of all exhibits to be offered at trial, other than those to be used for impeachment or rebuttal, for submission to the trial judge at the first appearance in the trial department. The index shall include a brief description of the exhibit. These indices shall be exchanged by counsel, and any unrepresented party, at least three (3) court days before trial. Formal objections to exhibits shall be in the form of a Motion In Limine pursuant to paragraph 5 of this order.
- 3.** Originals of all depositions to be used at trial shall be lodged with the courtroom clerk at the first appearance in the trial department. Counsel and any unrepresented party, shall meet and confer as described in paragraph 1 of this order to edit depositions as necessary and make a good faith effort to resolve admissibility issues related to depositions. If depositions, requests for admissions, interrogatory responses, or any other discovery response, are to be used in lieu of live testimony at trial, the parties shall submit the excerpts to be used to opposing counsel and any unrepresented party at least three (3) court days before trial. Legal grounds for objections to such excerpts shall be raised by Motion In Limine pursuant to paragraph 5 of this order. Counsel and any unrepresented party, are also directed to comply with the provisions of Code of Civil Procedure Section 2025(1) and (u) with respect to the anticipated use of video taped depositions.
- 4.** The proponent shall prepare a written transcript of any video or audio presentations intended to be used at trial pursuant to California Rules of Court, Rule 2.1040 , which shall be submitted to opposing counsel or any unrepresented party, at least three (3) court days before trial. Objections to said video presentation and/or transcript shall be raised in a Motion In Limine pursuant to paragraph 4 of this order.
- 5.** All Motions In Limine shall be in writing and personally served upon opposing counsel or any unrepresented parties, one (1) court day before trial, and filed with the courtroom clerk at the first appearance in the trial department. Motions In Limine not served in compliance with this Order may not be heard.
- 6.** A list of all witnesses (expert and non-expert), to be called at trial, other than those to be called for impeachment or in rebuttal, shall be personally served upon opposing counsel or any unrepresented parties three (3) court days before trial and presented to the trial judge at the first appearance in the trial department. Witnesses not listed are subject to exclusion at trial.
- 7.** Trial will not be delayed to accommodate witness scheduling problems. In the absence of extraordinary circumstances, a party will be deemed to have concluded the presentation of his/her case once the examination of available witnesses is concluded.
- 8.** If medical records are involved, the parties shall, at the conference described in paragraph 1 of this order, delete any information which counsel or any unrepresented party agree should not come into evidence, including insurance information. The proponent shall then prepare clean copies of the records for submission into evidence. Any disagreements or legal

grounds for objection to said copies of the records shall be stated in a Motion In Limine filed pursuant to paragraph 5 of this order.

**9.** Each counsel and any unrepresented party, shall prepare a brief non-argumentative summary of the factual nature of the case for submission to the trial judge at the first appearance in the trial department. The purpose of the summary is to provide an overview of the cases for the court.

**10.** Only if the Probate Law provides for trial by jury in the case, shall each counsel and any unrepresented party, submit a set of proposed jury instructions to the trial judge at the first appearance in the trial department. The submission of a list of BAJI numbers is not acceptable. The full text of the proposed instructions must be provided.

**11.** Only if the Probate Law provides for trial by jury in the case, if the use of a special verdict form is anticipated, each counsel and any unrepresented party, shall prepare a form of special verdict to be submitted to the trial judge at the first appearance in the trial department.

**12.** Only if the Probate Law provides for trial by jury in the case, shall examination of prospective jurors be conducted pursuant to Code of Civil Procedure Section 222.5 California Rules of Court, Standards of Judicial Administration, Standard 3.25, and California Rules of Court, Rule 3.1540. Supplemental voir dire questions shall be personally served upon opposing counsel or any unrepresented parties, three (3) court days before trial and submitted to the trial judge at the first appearance in the trial department. Jury voir dire questions not exchanged and submitted in accordance with this rule may not be allowed during jury selection.

**13.** If this case involves technical or unusual vocabulary, a special glossary in triplicate shall be submitted to the courtroom clerk at the first appearance in the trial department.

**14.** All motions to continue the trial set shall be made and filed in the Probate Department.

**15.** Any delay in trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to Code of Civil Procedure Sections 128.5 and 177.5.

*(Effective 7/1/99; Amended 1/1/04 and 1/1/07)*

**ATTACHMENT D**

**PROTOCOL REGARDING INTER-COURT COMMUNICATION  
OF DOMESTIC VIOLENCE RESTRAINING ORDERS**

**Statement of Purpose**

This Protocol is adopted in compliance with California Rules of Court, Rule 5.450, effective January 1, 2004 and renumbered effective 1/1/07, and complies with California Family Code sections 6380, and 6383, as well as California Penal Code, section 136.2 as currently amended.

**Protocol Goals**

The goals of this protocol are to:

- 1) Establish a procedure for communication among courts issuing criminal protection orders and courts issuing orders involving child custody and visitation orders, regarding the existence and terms of criminal protective orders and child custody and visitation orders, including:
  - A. A required procedure for courts issuing child custody or visitation to make reasonable efforts to determine whether there exists any criminal court protective order that involves any party to the action; and
  - B. A procedure to require courts issuing criminal court protective orders to make reasonable efforts to determine whether there exists any child custody or visitation orders that involve any party to the action.
- 2) Establish a procedure by which the court issuing the criminal court protective order may, after consultation with a court issuing subsequent child custody and visitation orders, modify the criminal court protective order to allow or restrict contact between the person restrained by the order and his or her children.
- 3) The above described orders shall include the following:
  - A. Family Law Court orders made pursuant to the Domestic Violence Prevention Act (F.C. 6200 et. Seq.);
  - B. Juvenile Court orders made pursuant to W. &I. 213.5;
  - C. Criminal Court Orders made pursuant to P.C. 136.2 where the victim and the defendant have a relationship as defined in F.C. 6211;
  - D. Civil Court orders made pursuant to C.C.P. 527.6 where the victim and the defendant have a relationship as defined in F.C. 6211;
  - E. Probate Court orders made in guardianship cases.
- 4) Provide for the co-existence of non-conflicting orders with the following limitations:
  - A. The Criminal Court protective order under P.C. 136.2 supersedes all other orders in the event of a conflict; and

- B.** All orders involving child visitation with the restrained person shall be specific as to time, date and location of the visit and shall include provisions for the safe exchange of the children. Safety of all parties shall be the Court's paramount concern.
- 5) Encourage the establishment of regional communication systems with courts in neighboring counties regarding the existence and terms of criminal court protective orders.

## **PROTOCOL**

### **COURT COMMUNICATION REGARDING RESTRAINING ORDERS - CRIMINAL, CIVIL, FAMILY, JUVENILE, PROBATE**

1. Criminal Protective Orders take precedence over all other protective orders issued by the Civil, Family, Juvenile and Probate courts, subject to the provisions below.
2. Criminal Court procedure:
  - A.** When the Criminal Court issues Criminal Protective Orders protecting victims, the Criminal Court shall determine whether there are any minor children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those minor children.
  - B.** If there are minor children, the Criminal Court shall consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing defendant/restrained person to visit the minor children. The Court shall give the defendant/restrained person an information packet concerning his or her rights to request custody and/or visitation through the Family or Juvenile Court, along with directions to the Self-Help Center.
  - C.** The Criminal Court shall also determine whether there are any existing protective/restraining orders involving the defendant/restrained person, the victim/protected person, and/or the minor children. Subject to available resources, the Court shall examine available databases for existing protective or restraining orders before issuing permanent Criminal Protective Orders.
  - D.** If the Criminal Court order includes minor children as named protected parties, the order may be made explicitly subject to modification by a Civil, Family, Juvenile or Probate judge. If this qualifying clause is not included in the Criminal Court order, the order may not be modified without notification and consent of the issuing criminal court.
  - E.** When the Criminal Court issues Criminal Protective Orders that list the defendant/restrained person's minor children as protected persons, the Criminal Court shall forward a copy of its Order to the Family Court. If a Civil, Juvenile or Probate Court proceeding concerning the family is pending a copy of the order shall be faxed to the applicable court.
3. Modification Of Criminal Protective Orders

**A.** Any Court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order may modify the Criminal Protective Order if all of the following circumstances are applicable:

- i.** Both the defendant/restrained person and the victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the Court.
- ii.** The defendant/restrained person is on probation (formal or court) or has a case pending for a domestic violence offense in Alameda County.
- iii.** The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order.
- iv.** Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a less restrictive order.

**B.** A Criminal Protective Order may not be modified to a less restrictive order or to one permitting proposed visitation or custody unless a clause specifically allowing such a modification or amendment is included in the Criminal Protective Order. (see section 2D, supra.)

**C.** If the aforementioned clause allowing modification of a Criminal Protective Order does not appear on the face of the order, or if any party objects to the modification of the Criminal Protective Order, the Family, Juvenile, or Probate Court shall, at the request of an interested party or on its own motion, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court shall provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

Any modification of a Criminal Court Protective Order must be communicated to the Alameda County District Attorneys' Office.

**4.** Family, Juvenile, Probate, Civil Court Restraining Orders Involving Child Custody And Visitation Orders.

**A.** All personal conduct and stay away restraining orders in a judgment must include the date of expiration of such orders and good cause for granting such order(s) shall be set forth in attached declaration(s). In addition, all such restraining orders must be separately set forth on a CLETS or other applicable Judicial Council form.

**B.** Subject to available resources, the Family, Juvenile, and Probate Courts shall examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining

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Orders. In the event that this information is not available to the judicial officer, inquiry shall be made of the parties before issuing permanent CLETS Civil Restraining Orders.

C. Any order of the Family, Juvenile, or Probate Court that permits contact between a defendant/restrained person subject to either CLETS Civil Restraining Orders or Criminal Protective Orders and his or her minor children, shall contain specific language setting forth the time, day, place, and manner of the transfer of the minor children, including the safe exchange of the minor children, in accordance with Section 3100 of the Family Code. Such an order shall not contain language that conflicts with a Criminal Protective Order. Safety of all parties shall be the Court's paramount concern. The Court or a Court-related agency may recommend safe and specific contact with the minor children and direct the defendant/restrained person and/or the victim/protected person to the process for modification of protective orders.

*(Effective 7/1/05; Amended 1/1/07)*