

CHAPTER 5

CONSERVATORSHIPS AND GUARDIANSHIPS

5.00 PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law. If a certain law or provision is not addressed in this chapter of the Local Rules of Court, please review the Probate or Civil chapters of the Local Rules of Court or the California Rules of Court for information pertinent to the law or provision.

(Adopted October 1, 1998; Amended January 1, 2007)

5.01 FILINGS

- A. With the exception of Judicial Council forms, all separately filed pleadings must include in the caption, the date, time, and place of hearing.
- B. In all case types, petitioners must provide information related to their personal residential address, home telephone number, work address, work telephone number, e-mail address, and cell phone number, if any. This information may be filed as a confidential document.
- C. A copy of all documents filed in a conservatorship proceeding must be served on the court investigator. For those persons filing electronically, service on the Court Investigator shall be completed using the following electronic service address: probateinvestigator@monterey.courts.ca.gov.

For those persons permitted to file paper documents, service may be completed either electronically at the court investigator's e-service address or by mail to the Monterey Division of the Superior Court, 1200 Aguajito Road, Monterey, CA 93940. Service on the investigator shall be reflected on the proof of service or notice of hearing filed with the court.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2004; Amended January 1, 2007; Amended January 1, 2010; Rule 5.27(f) renumbered and re-lettered as 5.01(f) and amended July 1, 2010; Amended January 1, 2011; Amended July 1, 2012; Amended July 1, 2014; Amended July 1, 2016; Amended July 1, 2017)

5.02 EX PARTE PETITIONS

- A. The following petitions, powers, orders or authority require a noticed hearing and will not be granted ex parte. If an urgency or emergency exists, the remedy is to request an order shortening time with service on the court investigator.
 - 1. Powers relating to medical consent under Probate Code sections 2355, 2357, and 3200.
 - 2. Independent powers under Probate Code sections 2590 and 2591 relating to real property or transfers of personal property.

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3. Petitions authorizing sales, transfers, or encumbrances of personal property in an amount exceeding \$5,000 in the aggregate annually. (Prob. Code, § 2545, subd. (b).)
4. Proposed action to exercise substituted judgment. (Prob. Code, § 2580.)
5. Authorization for gifts from excess income. (Prob. Code, § 2423.)
6. Authorization to purchase real property.
7. Petitions for fees.

(Adopted October 1, 1998; Amended January 1, 2008; Amended January 1, 2011; Amended (repealed subd. (a), (b) and (c)(7), renumbered (c) to (a) and (8) to (7) July 1, 2012)

PETITIONS FOR CONSERVATORSHIP

5.03 PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ONLY

- A. For a petition for appointment of probate conservator of the person only, petitioner shall by declaration indicate why a conservatorship of the estate is not necessary.
- B. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has a trust:
 1. Petitioner shall identify any and all trusts, including any and all amendments that may or may not have been revoked by the subsequent documents;
 2. The proposed conservatee's interest in the trust;
 3. The name of the trustee and/or successor trustee;
 4. An estimated value of the size of the trust;
 5. An estimated value of any income the proposed conservatee may be entitled to, and;
 6. An estimated value of principal distributions, if any, the proposed conservatee may be entitled to;
 - a. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has execute powers of attorney, petitioner shall provide:
 - i. The identity of the named agent;
 - ii. An estimate of the value of the assets subject to the power of attorney; and
 - iii. An estimate of the income of the proposed conservatee and its source;

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- b. The petitioner shall include any and all documents identified, including any revoked instruments, and/or state why the documents are not available.

(Rule 5.03 previously adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Renumbered as 5.04, 5.05, 5.06, 5.07, and 5.08 January 1, 2009; New rule 5.03 adopted January 1, 2009; Amended July 1, 2014; Amended July 1, 2016)

5.04 REPEALED

(Adopted October 1, 1998; Conservator of developmentally disabled person - Repealed July 1, 2014)

5.05 REPEALED

(Adopted January 1, 2009; Supplemental information - Repealed July 1, 2014)

5.06 NOTICE

- A. A minimum of thirty (30) days notice is required for the court investigator to complete an investigation pursuant to Probate Code section 1826. An investigation is required in all cases even if the proposed conservatee is the petitioner and will attend the hearing.

(Rule 5.03(c) renumbered as 5.06 and amended January 1, 2009; Amended July 1, 2014)

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator:

- A. Where appointment of counsel is required under Probate Code section 1471, subdivision (a), an ex parte order for appointment of counsel should be submitted when the petition is filed to avoid continuance or delay.
- B. "Referral for Court Investigator-Conservatorship" (Clerk form CI-123, see the court's website: www.monterey.courts.ca.gov)
- C. Order Appointing Court Investigator directed to: "Monterey County Court Investigator". The appropriate boxes on the order should be designated to provide the Court Investigator ongoing authority for future reviews.
- D. "Duties of Conservator and Acknowledgment of Receipt of *Handbook for Conservators*" (Judicial Council Form GC-348) signed by each proposed conservator. The *Handbook for Conservators* may be obtained at the California Courts Website at: www.courts.ca.gov/documents/handbook.pdf, on the Court's Website at www.monterey.courts.ca.gov/ or at the Monterey courthouse for a fee.

(Rule 5.03(e) renumbered as 5.07 and amended January 1, 2009; Amended July 1, 2009; Amended July 1, 2013; Amended July 1, 2014; Amended July 1, 2017)

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5.08 THE PETITION FOR PERMANENT CONSERVATORSHIP

- A. When a petition is granted, the petitioner shall file the following documents prior to the issuance of letters of conservatorship:
1. The order appointing conservator (Judicial Council form) and attachments;
 2. Proof of service of order appointing conservator, including service on the court investigator and the conservatee;
 3. Bond per Probate Code section 2300, subdivision (b) or receipts from financial institutions per Probate Code section 2328; and
 4. Conservator's acknowledgment of duties and responsibilities, including his or her date of birth and driver's license number.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Rule 5.03(e) renumbered as 5.08, re-lettered and amended January 1, 2009; Amended July 1, 2014)

5.09 REPEALED

(Adopted October 1, 1998; Petition for appointment of professional conservator - Repealed July 1, 2014)

5.10 LIMITED CONSERVATORSHIPS

An ex parte order for appointment of the Monterey County Public Defender or private counsel should be submitted when the petition is filed to avoid continuance or delay. Appointment of counsel for a proposed limited conservatee is mandatory. (Prob. Code, § 1471, subd. (c).)

(Adopted October 1, 1998; Amended January 1, 2008; Rule 5.05 renumbered as 5.10 January 1, 2009; Amended July 1, 2014)

5.11 LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIPS

- A. Petition Requirements. All petitions for appointment of conservator should state whether or not there is presently a conservator appointed under the Lanterman-Petris-Short Act, and, if so, the number of the case, the name of the conservator, and the LPS court's findings regarding the affidavit of voter registration.
- B. Notice. Notice shall be given to the LPS conservator in the same manner as that given to relatives in the second degree.

(Adopted October 1, 1998; Amended January 1, 2009)

5.12 TEMPORARY CONSERVATORSHIPS

- A. Where a petition for appointment of temporary conservator is filed, the Court's

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Investigator's Office shall be personally served at least five (5) days before the scheduled hearing.

- B. Extraordinary powers for authority to give or withhold consent for medical treatment pursuant to either Probate Code sections 2355 or 2357 shall not be granted except upon a noticed hearing.
- C. Temporary letters of conservatorship must state a date certain of expiration. This Date shall not go beyond the date of the hearing on the permanent conservatorship. If a continuance is requested and allowed, new letters will be issued upon request and shall expire on the continued date of the hearing.

(Adopted October 1, 1998; Rule 5.07 renumbered as 5.12 and amended January 1, 2009; Amended July 1, 2014)

5.13 HEARING AND APPOINTMENT

- A. The report of the court investigator shall be filed with the clerk at least fourteen (14) calendar days in advance of the hearing. At the same time, a copy shall be mailed or electronically served to the attorneys for petitioner and for the proposed conservatee, if any. The report of the court investigator and its contents shall be kept confidential as required by Probate Code section 1826, subdivision (n).
- B. The proposed conservatee must attend the hearing except where excused pursuant to Probate Code section 1825.
 - 1. The proposed conservatee must come forward to the counsel table where the court may inquire of and advise the proposed conservatee as required by Probate Code section 1828 or, in the case of a limited conservatorship, Probate Code section 1828.5.
 - 2. If there has been a nomination and/or waiver of bond filed, executed by the proposed conservatee, the court shall satisfy itself that he/she had the capacity to execute and understand the nature and significance of such documents.
 - 3. The proposed conservatee shall personally respond to any court inquiry. A statement by counsel that the conservatee is present and does not object is not sufficient.
 - 4. The above requirements also apply where the proposed conservatee is the petitioner.
- C. Before Letters shall be issued to the conservator of the person or estate in a newly established conservatorship; or in the case of an existing conservatorship, before any subsequent orders will be signed at the time of the next court review; the conservator must:
 - 1. View the video "With Heart: Understanding Conservatorships." Unless the conservator is a registered professional conservator, he/she must execute and file the requisite acknowledgment of viewing – Local Form CI-134 "Conservator Viewing Receipt." The video may be viewed on-line at www.courts.ca.gov/selfhelp-conservatorship.htm, at your attorney's office or self-help center, or at the Monterey Courthouse with payment of a fee to view at the courthouse.

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2. The Proposed Conservator(s) must have already obtained a copy of the "Handbook for Conservators", which is available on-line at www.courts.ca.gov/documents/handbook.pdf or can be purchased at the courthouse for a fee. (See Local Rule 5.07)

A guide to community resources helpful to conservators is published by the Monterey County Area Agency on Aging and may be found on-line at www.co.monterey.ca.us/aaa/download/2016rg_eng.pdf (English). [A version in Spanish may be found at www.co.monterey.ca.us/aaa/download/2016rg_sp.pdf]

D. Fees

1. Legal fees for counsel appointed by the court to represent the conservatee may be approved and included in the order appointing conservator.
2. Fees for counsel representing the petitioner or the conservator, regardless of whether the conservatee was also the petitioner, may not be requested until after the filing of the "Inventory and Appraisal," and in no case before the expiration of ninety (90) days from the issuance of permanent Letters. (Prob. Code, § 2640.)

(Adopted October 1, 1998; Rule 5.08 renumbered as 5.13 and amended January 1, 2009; Amended July 1, 2016; Amended July 1, 2017)

5.14 APPOINTMENT OF ATTORNEYS FOR CONSERVATEES

- A. Estate in Danger of Dissipation. Where it appears to the court that the estate is in danger of being dissipated or that the conservator or guardian will not respond to citations issued by the court, an attorney will be appointed for the conservatee. Said attorney shall prepare and file a report for the court no later than seven (7) calendar days prior to the scheduled hearing date.
- B. Medical Consent by Conservatee. The court may appoint an attorney for the conservatee when a request is made under Probate Code section 1880 for the court to determine whether the conservatee is incapable of giving medical consent, whether such request is made in the original petition or in a separate petition.
- C. Cessation of Representation by Attorney. The representation by an attorney appointed by the court ceases upon the hearing on the petition or petitions for which he/she was appointed, unless continued representation is specifically ordered by the court.

(Adopted October 1, 1998; Rule 5.09 renumbered as 5.14 and amended January 1, 2009)

5.15 BOND

- A. If independent powers (Prob. Code, §§ 2590 & 2591) are granted to include the sale of real property (Prob. Code, § 2591, subd. (d)), or to encumber real property as security for a loan, (Prob. Code, § 2591, subd. (f)), the bond shall include the value of the real property.

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1. If sufficient restrictions, limitations or, conditions to adequately safeguard and secure the real property are included in the order granting the independent powers, bond need not include the value of the real property.
2. Where the independent power to sell real property is limited by requiring court approval or confirmation, said confirmation shall follow the procedure required as if no independent power had been granted. Confirmation proceedings may be dispensed with upon the filing of an appropriate bond and compliance with Probate Code section 2540, subdivision (b). Dispensing with the confirmation of sale does not imply court approval. The court retains the authority to review the sale at the time of the next account and court review.
3. If real property is sold pursuant to Probate Code section 2591, subdivision (d), the sale price may not be less than ninety percent (90%) of the appraised value determined by the probate referee within one (1) year prior to sale, unless otherwise authorized by the court.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2008; Rule 5.10 renumbered as 5.15 and amended January 1, 2009; Amended July 1, 2014)

POST-APPOINTMENT CONCERNS

5.16 NOTICE OF ESTABLISHMENT OF CONSERVATORSHIP

In each case in which real property is an asset of the estate, it is the duty of the conservator of the estate (whether temporary, permanent, or successor) to record a notice of establishment of conservatorship with the county recorder in each county where real property of the estate is located, unless: a) the conservatorship is a limited conservatorship and the conservator has not been given the power to contract; or b) the rights of the conservatee have been broadened pursuant to Probate Code section 1873 so that the conservatee retains all powers to deal with the real property.

(Adopted October 1, 1998; Rule 5.11 renumbered as 5.16 January 1, 2009)

5.17 CONSERVATEE'S RESIDENCE-CONSERVATEE'S REAL PROPERTY

- A. When authorization is granted it shall be for a period of time not to exceed four (4) months. The order shall provide for immediate return of the conservatee to the State of California at the end of the authorized time period. The court will extend the four (4) month time period only upon a satisfactory showing that an equivalent proceeding has been initiated in the other state. The period of any extension granted by the court will only be sufficient to allow the equivalent proceeding to be finalized. The court retains jurisdiction until the equivalent proceeding is finalized and a certified copy of the court's order from the new state of residence is filed.
- B. Where authorization has been granted for temporary residence outside the State of California, the conservator shall return the conservatee to this state for the personal visit by the court investigator at the time a "Court Review" is required.

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- C. The court investigator is not authorized to conduct any court investigation or review through a third person out of state.

(Adopted October 1, 1998; Amended January 1, 2002; Amended July 1, 2004; Amended January 1, 2008; Rule 5.13 renumbered as 5.17 and amended January 1, 2009; Amended July 1, 2014)

5.18 REPEALED

(Adopted October 1, 1998; Placement assessment evaluation - Repealed July 1, 2014)

5.19 REPEALED

(Adopted October 1, 1998; Inventory and appraisal - Repealed July 1, 2014)

5.20 SUBSTITUTED JUDGMENT (Prob. Code, § 2580)

- A. Petitions requesting authority to exercise substituted judgment will not be heard until after the permanent conservator is appointed and letters have been issued. Additionally:
1. The "Inventory and Appraisal" shall be filed, unless the court otherwise orders on the basis of a clear and convincing showing that an urgency exists; and
 2. If the court waives filing of a formal "Inventory and Appraisal," the petition shall nonetheless include a description of the character and estimated value of the property of the estate.
- B. Petitions requesting substituted judgment, which potentially have an effect on the conservatee's estate plan, should provide all known testamentary documents related to the petition, including, but not limited to:
- Existing trust agreement;
 - Proposed trust agreement or proposed amendment;
 - Last will and testament of conservatee;
 - If no will, a specific description of how and to whom property would pass by intestacy; and
 - A statement of the nature and amount of existing claims of creditors' against the conservatorship estate.

Confidential documents may be sealed and may be viewed by the judge in chambers to maintain confidentiality.

- C. Upon the creation of a trust pursuant to a petition to exercise substituted judgment, the conservatorship of the estate shall continue in effect. The conservator will continue to supervise the trustee and enforce the trustee's fiduciary duties where necessary. Accountings will continue to be required as they would have if the trust had not been established. Nothing in this rule affects a trust already in existence before the conservatorship was established.

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D. Regardless of any other provision of the trust to the contrary, during the settler's lifetime the trustee shall be subject to the same duties and limitations as a conservator of the estate under the laws of the State of California, as to the following matters:

1. Posting bond
2. Filing accountings and reports for court approval
3. Investments and transaction
4. Trustee and attorney fees
5. Providing for the conservatee

No sales, or leases for terms exceeding one (1) year, shall be made without prior court approval.

(Adopted October 1, 1998; Rule 5.15 renumbered as 5.20 January 1, 2009; Amended July 1, 2014)

5.21 NOTICE OF CHANGE OF ADDRESS

Conservators and guardians shall file with the court and serve upon the court investigator:

1. Written notice of any change of their address, or the address of their conservatees or wards, within thirty (30) days of the change of address in compliance with Probate Code Section 2352; and
2. "Referral for Court Investigator-Conservatorship" (Form CI-123), See court website: www.monterey.courts.ca.gov). Failure to comply may result in suspension or removal.

(Adopted October 1, 1998; Rule 5.16 renumbered as 5.21 January 1, 2009; Amended July 1, 2014; Amended July 1, 2017)

5.22 COUNSEL FOR CONSERVATEE

In all cases where the conservatee is represented by counsel, orders submitted to the court must be approved as to form and content by conservatee's counsel. Counsel may sign the proposed order prior to electronic submission to the court, or counsel or approve on the record at the hearing.

(Adopted January 1, 2009)

COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

5.23 ACCOUNTS AND ACCOUNTING

A. Conservator's "Account" and "Status Report" shall be filed in conjunction with each "Court Review."

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- B. A "Confidential Status Report," as formerly required by Probate Code section 2620.1, shall be filed by the conservator at each Court Review. The "Confidential Status Report" shall be a separate document from the petition. This document is required of a conservator and is also required with any petition to waive the account.

The "Confidential Status Report" shall address the current physical/medical condition of the conservatee; the current level of care; any anticipated changes in residence and/or level of care, and reason(s) for change; any involvement of family and friends of the conservatee; and any unusual circumstances related to conservatee and/or conservatorship of the estate.

- C. The supporting documentation required by Probate Code Section 2620 shall be "lodged" with the court pending approval of the conservator/guardian's accounting. Lodged documents shall be submitted with a Financial Documents Caption Sheet (Form CI-126. See court website: www.monterey.courts.ca.gov) and a pre-addressed, postage paid envelope for return of the lodged documents. Upon approval of the accounting, the lodged documents shall be returned to the submitting party and retained by the attorney for the conservator/guardian, until the conservator/guardian has been discharged. In cases where the conservator/guardian is acting in propria persona, the conservator/guardian's supporting documentation shall be filed and retained in the court's file.
- D. Each "Account," whether filed annually or biennially shall cover the period ending on the anniversary date of appointment of the permanent conservator or successor. The anniversary date shall be the date of the hearing appointing conservator.
1. The petition and "Account" shall be filed no later than sixty (60) days after the anniversary date and shall be noticed for hearing forty-five (45) days after its filing in a year when a Court Review is due and at least fifteen (15) days after filing in a year when no Court Review is due.
- E. Upon appointment of a conservator and/or approval of conservator accountings, the court shall set the next review hearing, if needed, at the time of approval. Notice of the next hearing date will be provided in the courtroom and stated in the minute order, only. No "Notice of Court Review" will be mailed by the court.

All conservator accountings shall be filed at least forty-five (45) days prior to the scheduled review hearing date.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008; Rule 5.17 renumbered and re-lettered as 5.23; subd. (d) added; Amended January 1, 2009; Amended January 1, 2011; Amended (repealed financial documents caption sheet) July 1, 2012; Amended July 1, 2014; Amended January 1, 2016; Amended July 1, 2017)

5.24 REPEALED

(Adopted October 1, 1998; Accounting format - Repealed July 1, 2014)

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

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The following must be filed with each accounting:

- A. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (rule 5.23(B)). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.
- B. "Referral to Court Investigator" (Form CI-123; See court's website: www.monterey.courts.ca.gov).

(Adopted October 1, 1998; Rule 5.19 renumbered as 5.25 January 1, 2009; Amended January 1, 2011; Amended July 1, 2014; Amended July 1, 2017)

5.26 FINAL ACCOUNTS

- A. The "Final Account" shall be filed no later than ninety (90) days after termination of the conservatorship. (Date of death or date of order terminating the conservatorship.)
- B. The "Final Account" shall be accompanied by a petition requesting its approval, authority for disposition of the assets, and conservator's discharge upon the filing of receipts.
- C. If there is a request for waiver of Probate Code section 1851.5 assessments, a clear and concise reason shall be included in the petition.
- D. If a probate proceeding has already been initiated, the petition shall state the caption, case number, county where filed, and the name of the petitioning party.
- E. Notice of the hearing on a petition for settlement of the "Final Account" must be given to the personal representative, if any, of a deceased conservatee.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.20 renumbered as 5.26 January 1, 2009; Amended July 1, 2014)

5.27 FEES IN CONSERVATORSHIPS

- A. Fees for services as conservator or for legal services rendered to the conservator or conservatorship may not be requested until after the "Inventory and Appraisal" is filed, and in no case before the expiration of ninety (90) days from the date of appointment of the conservator. (Prob. Code, § 2640.)
- B. Fees for legal counsel appointed by the court to represent the conservatee may be requested and included in the order appointing conservator, notwithstanding that an "Inventory and Appraisal" has not yet been filed. If not awarded at this time, counsel for conservatee may request fees by his/her own noticed motion or by submitting a declaration and proposed order for fees for hearing at an already-scheduled hearing.

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- C. **Attorney Fees.** In determining attorney fees for representation of conservators or conservatees,. Counsel is directed to California Rules of Court, rules 7.750 – 7.755. All fee requests must comply with California Rules of Court, rule 7.751. The requested fee must be supported in a verified petition or by a separate verified declaration stating the nature, benefit to the conservatee or conservatorship estate, time spent, hourly rate, detail of services rendered, and the amount requested. A recitation of time spent, without more, is not adequate. The court has the discretion to require additional justification for all attorney fees requested.
- D. **Attorney Fees** will not be allowed for matters which are overhead, secretarial in nature, or do not require special legal skills. Examples of overhead: Secretarial and word processing time; time spent scanning or filing documents; cost of scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking. Ordinarily, no more than one (1) hour will be allowed for a court appearance in nonlitigated matters.
- E. The court shall consider the compensation customarily allowed by the court in the community, but it shall not be the exclusive basis for determining the just and reasonable compensation. For attorneys' fees in nonlitigated matters, the court has customarily allowed \$200 to \$300 per hour. As of July 1, 2017, the new custom shall be to consider approval of attorney fees of up to \$350 per hour. The court expects the attorneys to monitor their billing request to avoid seeking attorney compensation for overhead tasks or for researching to become competent to handle the matter.
- F. **Conservator Fees.** The court's review of conservator's fee request shall consider the nature of services provided, their necessity, the success or benefit to conservatee or the conservatorship estate, time spent, hourly rate, basis for the hourly rate, detail of services performed, expertise required, and the amount requested. A broad, general description of services or a simple recitation of time spent is not adequate. The court has the discretion to require additional justification for all conservator fees requested. Counsel are directed to California Rules of Court, rule 7.756 for additional factors which the court may consider.
- G. For private professional fiduciaries, the maximum ordinarily allowed is \$85 per hour for services rendered by the fiduciary, and \$45 per hour for staff. As of July 1, 2017, the new custom shall be to consider approving private professional fiduciary fees up to \$120 per hour and \$50 per hour for staff. Professional and Staff services should not include routine overhead items, such as Secretarial and word processing time; time spent scanning or filing documents; cost of scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking. All requests must clearly indicate who has performed the services for which extraordinary compensation is being requested. In the event that a fiduciary is performing services requiring special training and skills (e.g., a CPA preparing tax returns or performing an audit), the court will consider a higher hourly rate on a case by case basis. The court will in its discretion review these rates from time to time and make such adjustments as it appears to the court appropriate.
- H. For nonprofessional fiduciaries, the court customarily will allow no more than \$45 per hour, except when services are performed by family members, in which case the maximum allowed will be \$25 per hour. No fees will ordinarily be allowed for services rendered by a

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family member which are of the type that the court finds are expected to be performed by a family member by virtue of the family relationship (e.g., sitting at the bedside of an ill conservatee or simply being present while handymen remove items from a garage to haul away).

- I. Counsel and Fiduciaries should not assume that the court will automatically allow the maximum rates.
- J. Fees must be requested, waived or deferral of payment requested in conjunction with the accounting. Deferral of payment will only be approved subsequent to court approval of the amount of the fees for which deferral is requested.
- K. Where conservator is also the attorney for the conservatorship, there shall be separate itemized statements for services as conservator and for legal services showing clearly that there is no duplication of services and/or fees.

(Adopted October 1, 1998; Rule 5.21 renumbered as 5.27 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

5.28 SMALL ESTATES: PUBLIC BENEFITS (Prob. Code, § 2628)

- A. The petition shall be presented each time an "Account" would otherwise be due. This assures the court that the estate continues to qualify. Conservator shall also file:
 - 1. A Confidential Status Report as required by rule 5.23(C) and;
 - 2. A "Referral for Court Investigator-Conservatorship" (Form CI-123; See court's website: www.monterey.courts.ca.gov).
- B. The Order waiving an accounting must be served on the court investigator at least thirty (30) days prior to the hearing on the Court Review.

(Adopted October 1, 1998; Rule 5.22 renumbered as 5.28 January 1, 2009; Amended January 1, 2011; Amended July 1, 2014)

5.29 TRUSTS AND CONSERVATORSHIPS

Where conservatee is a beneficiary of a trust not established pursuant to Probate Code section 2580:

- A. A copy of the trust agreement shall be provided to the court investigator upon request;
- B. At the time of each "Court Review" a verified summary or recapitulation showing the following shall be filed as a confidential document:
 - 1. The principal amount of the trust estate;
 - 2. A description of conservatee's beneficial interest in the trust;

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3. The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal; and
 4. The name, address, and telephone number of the trustee.
- C. Any income required by the trust instrument to be distributed to the conservatee is conservatorship income and it must be included in an accounting to the court pursuant to these rules and Probate Code section 2620.
- D. For any trust created under the conservatorship as a matter of substituted judgment pursuant to Probate Code section 2580, accountings shall continue to be required, and the conservatorship shall not be terminated. (Local Rules of Court, rule 16.08.)

(Adopted October 1, 1998; Rule 5.23 renumbered as 5.29 January 1, 2009)

RESIGNATION AND REMOVAL

5.30 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR; FINAL ACCOUNT AND DISCHARGE

- A. Effective Date of Resignation. The conservator may resign at any time but the resignation is not effective and will not be approved until the appointment of a successor conservator. (Termination of a conservatorship does not require resignation of the conservator.)
- B. Contemporaneous Petition to Appoint Successor. A petition for resignation must be filed contemporaneously with a petition for appointment of a successor conservator, provided that the consent of the successor conservator is filed prior to or at the time of hearing.
- C. Final Account. A Final Account of the resigning conservator and/or a petition for fees upon resignation cannot be approved until a successor is appointed and is served with notice of hearing and a copy of the account and/or petition.
- D. A successor conservator's "First Account," as in the case of a predecessor, shall be presented to the court one (1) year after appointment.
- E. At the hearing for appointment of successor conservator, the same procedural requirements apply as for the initial appointment of conservator. (See Local Rules of Court, rules 5.03 and 5.07)
- F. The successor conservator of the estate shall not account for the period prior to his/her appointment, except as provided in Probate Code section 2632, and the predecessor shall not be discharged until all of the following are accomplished:
1. Approval of predecessor's Final Account including the period up to the appointment of the successor and delivery of assets;
 2. The filing of a receipt, executed by the successor conservator, acknowledging delivery and receipt of the assets as reflected in the "Assets on Hand" in the Final Account; and

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3. The predecessor conservator shall include in his/her petition for discharge a statement affirming that assets have been neither received by the estate nor disbursements made from the estate since the Final Account period.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 5.24 renumbered as 5.30 and amended January 1, 2009; Amended July 1, 2014)

5.31 REPEALED

(Adopted October 1, 1998; Absconding conservators - Repealed July 1, 2014)

5.32 REPEALED

(Adopted October 1, 1998; Termination of conservatorship - Repealed July 1, 2014)

5.33 ASSESSMENTS (Prob. Code, § 1851.5)

- A. The court investigator fee must be paid at the time the petition is filed in the following instances: Petition for Appointment of Probate Conservator, Petition for Appointment of Temporary Conservator, Conservator's Accountings when heard in conjunction with a Court Review, and/or Petition to Change Conservatee's Residence. If the conservator believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts to establish a hardship.
- B. Any request to have assessments deferred must be included in the petition to appoint conservator, successor conservator, or in the petition to approve or waive the account and must include the factual basis for the request.
- C. Upon termination, any assessments previously deferred are nonetheless due and payable, except under either of the following conditions:
 1. The conservatee is still living and payment of all or a portion should be waived based upon hardship to the conservatee, or,
 2. The conservatee's estate has no assets with which to pay all or a portion of the assessments due. Hardship is not a consideration where the conservatee is deceased.
- D. The order approving "Final Account" of conservator will not be granted until the assessments are either paid or waived by the court.

(Adopted October 1, 1998; Amended July 1, 2004; Rule 5.27 renumbered as 5.33 January 1, 2009; Amended January 1, 2010)

MISCELLANEOUS

5.34 CONSERVATORSHIPS TRANSFERRED FROM ANOTHER COUNTY

Copies of the petition and order authorizing transfer shall be served upon the court investigator of the county to which it is transferred, including cases transferred to Monterey County.

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(Adopted October 1, 1998; Rule 5.28 renumbered as 5.34 January 1, 2009)

GUARDIANSHIPS

5.35 APPOINTMENT OF GENERAL GUARDIANS

- A. Petition for appointment of guardians shall be accompanied by a "Confidential Declaration Regarding Household Members" (Form CI-130. See court website: www.monterey.courts.ca.gov).
- B. Single Application for Multiple Wards. The court will consider a single application for appointment of the same guardian of the person or estate or both of more than one (1) minor, if the minors are siblings. In all other instances separate applications must be filed.
- C. When no Fee Waiver Order has been obtained: the fee for the court investigator shall be paid within 10 days after the court has ordered the Court Investigation. If the petitioner believes the fees should be deferred or waived due to hardship, the petitioner shall file a request for deferral or waiver of the fee and shall set forth facts sufficient to establish a hardship.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.29 renumbered as 5.35 January 1, 2009; Amended January 1, 2010; Amended July 1, 2014; Amended July 1, 2017)

5.36 REPEALED

(Adopted October 1, 1998; Definition of Consanguinity, Repealed July 1, 2014)

5.37 DUTIES OF GUARDIAN - LIABILITY OF PARENTS TO SUPPORT CHILD

Parents are required by statute to support their children. Where a parent is also the guardian, the court will not permit guardianship funds to be used for the minor's maintenance, support, or education except upon a showing of extraordinary circumstances which clearly justify a departure from this rule as being in the best interest of the minor.

(Adopted October, 1, 1998; Rule 5.32 renumbered to 5.38 January 1, 2009; Rule 5.38 renumbered to 5.37 July 1, 2017)

5.38 ACCOUNTS

Multiple Wards. When a guardian accounts for the assets of more than one (1) minor, the accounting for each minor must be set forth individually.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 5.33 renumbered and amended as 5.39 January 1, 2009; Amended July 1, 2014; Rule 5.39 renumbered to Rule 5.38 July 1, 2017)

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5.39 FEES IN GUARDIANSHIPS

- A. Fees for services as guardian or for legal services rendered the guardian or guardianship may not be requested until after the "Inventory and Appraisal" is filed, and in no case before the expiration of ninety (90) days from the date of appointment of the guardian. (Prob. Code, § 2640.)
- B. Fees for legal counsel appointed by the court to represent the ward may be requested and included in the order appointing guardian, notwithstanding that an "Inventory and Appraisal" has not yet been filed. If not awarded at this time, counsel for ward may request fees by his/her own noticed motion or by submitting a declaration and proposed order for fees for hearing at an already-scheduled hearing.
- C. Attorney Fees. In determining attorney fees for representation of guardians or wards, Counsel is directed to California Rules of Court, rules 7.750 – 7.755. All fee requests must comply with California Rules of Court, rule 7.751. The requested fee must be supported in a verified petition or by a separate verified declaration stating the nature, benefit to the ward or guardianship estate, time spent, hourly rate, detail of services rendered, and the amount requested. A recitation of time spent, without more, is not adequate. The court has the discretion to require additional justification for all attorney fees requested.
- D. Attorney Fees will not be allowed for matters which are overhead, secretarial in nature, or do not require special legal skills. Examples of overhead: Secretarial and word processing time; time spent scanning or filing documents; cost of scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking. Ordinarily, no more than one (1) hour will be allowed for a court appearance in nonlitigated matters.
- E. The court shall consider the compensation customarily allowed by the court in the community, but it shall not be the exclusive basis for determining the just and reasonable compensation. For attorneys' fees in nonlitigated matters, the court has customarily allowed \$200 to \$300 per hour. As of July 1, 2017, the new custom shall be to consider approval of attorney fees of up to \$350 per hour. The court expects the attorneys to monitor their billing request to avoid seeking attorney compensation for overhead tasks or for researching to become competent to handle the matter.
- F. Guardian Fees. The court's review of guardian's fee request shall consider the nature of services provided, their necessity, the success or benefit to ward or the guardianship estate, time spent, hourly rate, basis for the hourly rate, detail of services performed, expertise required, and the amount requested. A broad, general description of services or a simple recitation of time spent is not adequate. The court has the discretion to require additional justification for all guardian fees requested. Counsel and parties are directed to California Rules of Court, rule 7.756 for additional factors which the court may consider.
- G. For private professional fiduciaries, the maximum ordinarily allowed is \$85 per hour for services rendered by the fiduciary, and \$45 per hour for staff. As of July 1, 2017, the new custom shall be to consider approving private professional fiduciary fees up to \$120 per hour and \$50 per hour for staff. Professional and Staff services should not include routine overhead items, such as Secretarial and word processing time; time spent scanning or filing

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documents; cost of scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking.

- H. All requests must clearly indicate who has performed the services for which extraordinary compensation is being requested.
- I. In the event that a fiduciary is performing services requiring special training and skills (e.g., a CPA preparing tax returns or performing an audit), the court will consider a higher hourly rate on a case by case basis.
- J. For nonprofessional fiduciaries, the court customarily will allow no more than \$45 per hour, except when services are performed by family members, in which case the maximum allowed will be \$25 per hour. No fees will ordinarily be allowed for services rendered by a family member which are of the type that the court finds are expected to be performed by a family member by virtue of the family relationship (e.g., transporting minors, going to school functions, etc.). See Local Rule 5.38 – parents are required to support their children. Fiduciaries should not assume that the court will automatically allow the maximum rates.
- K. Fees must be requested, waived or deferral of payment requested in conjunction with the accounting. Deferral of payment will only be approved subsequent to court approval of the amount of the fees for which deferral is requested.
- L. The court will in its discretion review these rates from time to time and make such adjustments as it appears to the court appropriate. Counsel and parties should not assume that the court will automatically allow the maximum rates set forth herein. Litigated matters will be considered on a case by case basis.
- M. Where guardian is also the attorney for the guardianship, there shall be separate itemized statements for services as guardian and for legal services showing clearly that there is no duplication of services and/or fees.

(Adopted July 1, 2017)

5.40 ANNUAL REVIEW OF GUARDIANSHIPS

Each guardian shall file with the court a completed Confidential Guardianship Status Report (GC-251) every year, as directed by the Court. The status report shall include a current note from the doctor and dentist, as well as a current report card and school attendance record for each minor. The guardian should check the probate notes on the court's website (monterey.courts.ca.gov) to see whether an appearance is excused at the scheduled annual Status Report hearing. If the Status Report is complete with the required attachments and the court has no questions to ask the guardian, the Probate Notes will state that an appearance is not required.

(Adopted January 1, 2009; Amended July 1, 2014; Amended July 1, 2017)

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5.41 INDEPENDENT POWERS

The court does not encourage granting of independent powers and will grant particular powers only in response to specific allegations showing their necessity. Where the power to sell real property is granted, the sale must be returned to the court for confirmation.

(Adopted October 1, 1998; Rule 5.34 renumbered as 5.41 January 1, 2009)

MINOR OR INCOMPETENT'S CLAIM

5.42 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM (Prob. Code, §§ 3500 – 3612)

- A. Petition. A petition to compromise the claim of a minor or incompetent must be filed as a civil proceeding, not a probate proceeding. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union, or savings and loan association in the manner provided by law, with receipts filed. Although filed as a civil proceeding, hearing shall be held in the probate department.
- B. Order. The order shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to the proposed trustee AND the bank, credit union, or savings and loan association.
- C. Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.
 - 1. The receipt and acknowledgment for deposit into blocked account shall be signed by a manager or assistant manager and filed with a business card.
 - 2. The court will set a hearing for proof of deposit into blocked account or proof of purchase annuity.

(Adopted October 1, 1998; Amended January 1, 2004; Amended January 1, 2007; Rule 5.35 renumbered to 5.42 and amended January 1, 2009; Amended January 1, 2011; Amended July 1, 2014)