CHAPTER 4
PROBATE DEPARTMENT

4.00 REPEALED

(Preamble – Repealed July 1, 2017)

ADMINISTRATION AND ORGANIZATION

4.01 PROBATE JUDGE

The probate judge shall be designated by the presiding judge.

(Adopted October 1, 1998)

4.02 REPEALED

(Adopted October 1, 1998; Other probate law and court rules - Repealed July 1, 2013)

4.03 REPEALED

(Adopted October 1, 1998; Signature of Judge – Repealed July 1, 2017)

4.04 CONSOLIDATION OF RELATED CASES

Whenever it appears that two (2) or more petitions with different case numbers have been filed involving the same matter or proceeding, the court will, on its own motion at the earliest opportunity, consolidate all of the matters into the file bearing the lowest number. All documents filed after consolidation must bear the case number of the controlling file.

(Rule 4.04 previously adopted October 1, 1998; Amended January 1, 2002; Renumbered as 4.05 and new rule 4.04 adopted January 1, 2009; Amended July 1, 2017)

4.05 MATERIAL TO BE INCLUDED IN PROBATE ORDERS

Orders shall contain the name of the judge presiding, the date of hearing and the department. All pages of the order shall include the case name and number in a footer or header. All orders or decrees in probate matters must be complete in themselves. They shall set forth, with the same particularity required of judgments in civil matters, all matters actually passed on by the court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be written so their general effect may be determined without reference to the petition on which they are based. Orders may reference attached exhibits where use of the exhibits is meant to safeguard against typographical errors, for example where lengthy property descriptions are involved. Exhibits must reference the case name and number. The preferred practice is to incorporate the exhibit into the order and provide for a judicial signature element at the end of the exhibit.

A. Orders Settling Accounts. In orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein. It is not sufficient in any order to recite merely that the petition as presented is granted. Orders settling accounts

must also contain a statement as to fees approved, fees waived, and the balance of the estate on hand, specifically noting the amount of cash included.

(Adopted October 1, 1998; Amended January 1, 2002; Rule 4.04 renumbered as 4.05 and amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2013; Amended July 1, 2017)

4.06 APPLICATIONS FOR EX PARTE ORDERS

Procedures for ex parte applications in probate, trust, conservatorship, and guardianship matters shall be conducted in the same manner as those in general civil cases, per rule 7.11.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Rule 4.05 renumbered as 4.06 January 1, 2009; Repealed January 1, 2011; Amended July 1, 2012; Amended July 1, 2013)

4.07 CONTACT WITH RESEARCH ATTORNEY / PROBATE EXAMINER

The research attorneys and probate examiners are not required to provide answers to general legal and/or hypothetical questions. General legal questions or questions involving hypothetical fact situations will be discussed at the discretion of the research attorney. Such discussions may not be cited as authority for actions subsequently taken. Research attorneys and probate examiners should not be considered an alternative to basic legal research.

(Adopted October 1, 1998; Rule 4.06 renumbered as 4.07 and amended January 1, 2009; Amended July 1, 2017)

4.08 PROBATE CALENDAR

Probate matters are heard in Monterey on Wednesday mornings. Please see the court website at www.monterey.courts.ca.gov for available dates. The petitioner shall leave the space for the date blank. The clerk will fill in the next available date on the document. Petitioner may request a particular date when submitting the documents.

Normally probate matters are heard on the documents and declarations submitted. If testimony is required, or the hearing will require more than ten (10) minutes, arrangements should be made for a special setting. Special settings are set by way of properly calendared motions.

If it shall appear, when a matter is called, that it will require more than ten (10) minutes, the court may reset the matter to another time and/or day.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended July 1, 2004; Rule 4.07 renumbered as 4.08 and amended January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

4.09 APPEARANCES AND SUBMITTED CALENDAR

All matters require an appearance, unless the Probate Notes state the matter is ready for decision absent objection, no appearance required. If an objection is raised at the hearing and petitioner elected not to appear, the matter will be continued. If an appearance is not excused

by the Probate Notes and no one appears, the court may dismiss the petition, set an Order to Show Cause, or take other action.

To determine if an appearance is required, view "Probate Notes" on the probate section of the court's website at http://www.monterey.courts.ca.gov/Probate/ .

If the Probate Notes state the matter is ready for approval absent objection, then no appearance is required if no objection is expected. If the objector does appear at the hearing and petitioner is not present, then the matter will be continued.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2004; Rule 4.08 renumbered as 4.09 and amended January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

4.10 PROPOSED ORDERS—FORM AND CONTENT

A. In all conservatorships where conservator is represented by counsel, counsel must approve the proposed order as to form and content. Counsel may sign the proposed order in advance of the hearing prior to electronic submission to the court, or counsel may approve on the record at the hearing.

B. Orders must be separate documents. Orders may not be included in the body of a petition.

C. Orders may not include a blank judicial signature page following the text on an order. Use footers on the signature page which would include the case name and case number.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2006; Amended January 1, 2007; Rule 4.09 renumbered as 4.10 and amended January 1, 2009; Repealed 4.10 (A)-(C) and renumbered (D)-(F) to (A)-(C) July 1, 2013; Amended July 1, 2017)

PLEADINGS

4.11 WITHDRAWAL OF COUNSEL OF RECORD

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a motion to withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. (See e.g., *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545.) Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the notice required by Probate Code section 1213.

(Rule 4.11 previously adopted October 1, 1998; Renumbered as 4.13 January 1, 2009; New rule 4.11 adopted January 1, 2009)

4.12 CAPTION OF PETITIONS AND PLEADINGS

With the exception of Judicial Council forms, all separately filed pleadings must include in the caption, the date, time, and place of hearing. Separately filed pleadings include later filed declarations responsive to inquiries made by the court in advance of the hearing date.

The calendar department of the court is not required to read the body of the petition or the prayer to determine the adequacy of the pleading. The caption of petitions must be all-inclusive as to the relief sought in the petition so that the matter may be properly calendared and posted, and filing fees, if any, determined. If any part of the estate is to be distributed to a trust, the caption must so indicate.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.10 renumbered as 4.12 and amended January 1, 2009)

4.13 REPEALED

(Adopted October 1, 1998; Pleadings must be signed by representative, trustee, guardian or conservator - Repealed July 1, 2013)

4.14 REPEALED

(Adopted October 1, 1998; Amendment of pleadings - Repealed July 1, 2013)

4.15 FILING DEADLINE

A. When statutes provide that documents may be filed within three (3) calendar days of the hearing, service on opposing counsel must be by personal delivery (or by Electronic Service under CRC, rule 2.251 or by FAX when permitted by CRC, rule 2.306).

(Adopted October 1, 1998; Amended January 1, 2001; Amended January 1, 2007; Amended January 1, 2008; Rule 4.13 renumbered as 4.15 and amended January 1, 2009; Repealed (A)-(B) and re-lettered (C) to (A) July 1, 2013; Amended July 1, 2017)

STIPULATIONS

4.16 CONTINUANCES

Matters may not be continued by the petitioning party or by stipulation of counsel without authorization from the court. The court will no longer accept telephone or letter requests to continue the matter. All requests for continuance shall use Local Form #CI-105 “Request for Continuance of Hearing and order.” The fee stated in Government Code section 70617 shall be submitted with the request. All requests should be filed with the court no later than five (5) court days prior to the hearing.

Matters that have been set by the court shall not be continued at any time without authorization from the court.

(Adopted October 1, 1998; Rule 4.14 renumbered as 4.16 January 1, 2009; Amended July 1, 2017)

NOTICES, PUBLICATION AND SERVICE OF CITATIONS

4.17 NOTICES GENERALLY

Notice requirements with respect to particular petitions or matters are set forth elsewhere in the Probate Code and California Rules of Court. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given.

When notice of hearing is required – whether by personal service, mailing or publication – petitioner must give such notice and file the necessary proof of service. The court clerk does not have this responsibility.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.15 renumbered as 4.17 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

4.18 REPEALED

(Adopted October 1, 1998; Additional Notice Requirements - Repealed July 1, 2013)

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.19 REPEALED

(Adopted October 1, 1998; Notice Re: Special Letters - Repealed July 1, 2013)

4.20 ALLEGATIONS IN PETITIONS RE: HEIRS OR BENEFICIARIES

A. Nominated Trustee(s). The nominated trustee(s) of a trust created by a will must be listed as a devisee or legatee. If the trustee is also the estate representative or no trustee has been appointed, the individual trust beneficiaries must also be set forth and served with notice of hearing as set forth in Probate Code section 1208.

B. If the beneficiary of a Will is a Trustee for a Trust, then petitioner must file a copy of the Trust as a separate confidential document.

C. If there is an allegation in the Petition for Probate that there is an issue of a pre-deceased child, then include the name of the pre-deceased child(ren) and the date of death when listing all heirs of the Descendent in the initial petition seeking appointment of a personal representative.

D. Post-deceased Heirs, Devisees or Legatees. If an heir, devisee, or legatee dies after the decedent, and a personal representative has been appointed for the heir, devisee or legatee, the heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the heir,

devisee, or legatee should be listed as deceased and notice should be given to the heirs, legatees, or devisee of the post deceased heir. In either case, the date of death should be included.

E. Contingent Heirs. All contingent heirs and legatees must be listed in the petition and are entitled to receive notice of the hearing.

(Adopted October 1, 1998; Amended January 1, 2001) Rule 4.18 renumbered as 4.20 January 1, 2009; Amended July 1, 2017)

4.21 REPEALED

(Rule 4.19 renumbered as 4.21 January 1, 2009; Subsequent Petitions For Probate - Repealed July 1, 2013)

4.22 REPEALED

(Adopted October 1, 1998; Notice By Mail - By Whom Given - Repealed July 1, 2013)

4.23 REPEALED

(Adopted October 1, 1998; Heirs Without Known Addresses - Repealed July 1, 2013)

4.24 REPEALED

(Adopted October 1, 1998; Continuance To Permit Filing Of Will Contest - Repealed July 1, 2013)

4.25 PETITIONER SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE

The court requires all petitioners seeking appointment as a personal representative to file the Confidential Statement of Birth Date and Driver's License Number (Judicial Council form DE-147S) pursuant to Probate Code section 8404, subdivision (b).

(Rule 4.25 previously adopted October 1, 1998; Amended January 1, 2008; Renumbered as 4.28 January 1, 2009; New rule 4.25 adopted January 1, 2009)

4.26 REPEALED

(Adopted October 1, 1998; Bonding Of Personal Representatives - Repealed July 1, 2013)

4.27 REPEALED

(Adopted October 1, 1998; Bond For Special Administrators - Repealed July 1, 2013)

4.28 REPEALED

(Adopted October 1, 1998; Issuance Of Letters - Repealed July 1, 2013)

4.29 DECLINATIONS AND CONSENTS TO SERVE

A. Declination of Named Executor. It is insufficient merely to allege that the person named in the decedent's will as executor thereof declines to act as such. A written declination to act, verified under penalty of perjury (Code of Civil Pro., § 2015.5) by such person, must be filed with the court.

B. Two or More Executors. If a petition for letters to be issued to two (2) or more executors is filed, and one (1) or more of the named executors is not a petitioner, each non-petitioning executor must file a consent to act, verified under penalty of perjury.

(Adopted October 1, 1998; Rule 4.26 renumbered as 4.29 January 1, 2009)

4.30 MULTIPLE REPRESENTATIVES

When multiple personal representatives are appointed, letters shall be issued jointly to all of them, and not separately to any of them, unless specifically permitted by court order.

(Adopted October 1, 1998; Rule 4.27 renumbered as 4.30 January 1, 2009)

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.31 REPEALED

(Adopted October 1 1998; Spousal Property Petitions - Repealed July 1, 2013)

4.32 PROVISION RE: SURVIVORSHIP

If a spouse's right to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse until the expiration of the survivorship period.

(Adopted October 1, 1998; Rule 4.29 renumbered as 4.32 January 1, 2009)

INDEPENDENT ADMINISTRATION

4.33 DISTRIBUTION UNDER ACT

A. Schedule of Claims. In any petition for distribution, a schedule of claims must be included as part of the petition, showing the name of the claimant, amount claimed, date presented, date allowed, the amount allowed, and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice of rejection with affidavit of mailing to the creditor must be on file. The notice of allowance should not be filed unless the creditor is the personal representative and/or counsel for the estate.

B. Preliminary Distribution. Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the court to ascertain that the estate is solvent. If the court has questions concerning the propriety of a preliminary distribution, the court may require an accounting.

C. Description of Independent Acts. In any petition for distribution, all independent acts taken without prior court approval shall be set forth and described, and an allegation made that the fifteen (15) day notice of proposed action was duly served and that no objections were received or that notice was not required. The original "Notice of Proposed Action," with attached affidavit of mailing shall be on file with the court. If certain acts have been properly reported in a prior petition for distribution, and notices filed, they need not be reported again.

(Adopted October 1, 1998; Rule 4.30 renumbered as 4.33 January 1, 2009)

PETITIONS FOR INSTRUCTIONS GENERALLY

4.34 REPEALED

(Adopted October 1, 1998; Limitations on Use of Petitions for Instructions - Repealed July 1, 2013)

4.35 REPEALED

(Adopted October 1, 1998; Petitions to Determine Title to Real or Personal Property Pursuant to Probate Code Section 9860 - Repealed July 1, 2013)

CREDITORS' CLAIMS

4.36 REPEALED

(Adopted October 1, 1998; Filing, Approval, Rejection And Payment Of Claims - Repealed July 1, 2013)

4.37 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken. The allegation shall set forth reasons for any delay in making payment. The court will not allow credit for payment of interest where the delay in payment of the claims is not justified by the facts set forth.

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101, which provides that interest is allowed commencing sixty (60) days after the date of death.

(Adopted October 1, 1998; Rule 4.33 renumbered as 4.36 January 1, 2009)

SALES

4.38 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

A. Required Notice. Unless a will specifically grants an executor, as distinguished from an administrator with will annexed, the authority to sell without notice (Prob. Code, § 10303), a publication of notice of sale of real property is required.

B. Content of Notice. The notice of sale of real property must substantially comply in its content with the following example:

"NOTICE IS HEREBY GIVEN that, subject to confirmation of this court on (insert date, time and department), or thereafter within the time allowed by law, the undersigned as (administrator or executor) of the estate of the above named decedent, will sell at private sale to the highest net bidder, on the terms and conditions hereinafter mentioned, all right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the real property located in Monterey County, California, as follows:

(Insert Legal Description of Property here.)

APN:
This property is commonly referred to as (insert address here) and includes (insert any fixture included in the price).

The sale is subject to current taxes, covenants, conditions, restrictions, reservations, right of way and easements of record, with any encumbrances of record to be satisfied from the purchase price.

The property is to be sold on an "as is" basis, except for title.

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert administrator or executor) and a REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY has been filed in these proceedings, which Report and Petition have been set for hearing on (insert hearing date) and notice made to all interested parties. THE PURPOSE OF THIS NOTICE IS TO INVITE BIDS OVER THE ACCEPTED OFFER, in accordance with the provisions of California Probate Code section 10311. By statute, the initial overbid must be in the amount of (insert first overbid amount).

Overbids are invited for this property and must be in writing and presented on (insert court confirmation hearing date) at (insert hearing time) in department (insert department no.) of the Superior Court of the State of California, for the County of Monterey, 1200 Aguajito Rd., Monterey, California. Bid forms may be obtained from the attorney for the (administrator or executor) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

- The property will be sold on the following terms (insert all applicable terms).
- The undersigned reserves the right to refuse to accept any bids.

C. Time. If notice of sale is published, any sale must be in accordance with its terms. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed, and new notice of sale must be published. Pursuant to Probate Code section 10308, any petition for confirmation of sale must allege that the sale was made within thirty (30) days prior to the date on which the petition was filed. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on

the date set for hearing but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.

D. Terms of Sale. The published notice of sale of real property constitutes a solicitation for offers. The terms of the solicitation must be substantially similar to the terms of the accepted offer that is the subject of the report of sale and petition for order confirming sale of real property. Published terms of the solicitation cannot be more onerous than the terms of the accepted offer.

E. Defect in Notice. If an executor publishes a notice of sale of real property and proceeds with that sale and later a technical defect appears, this defect cannot be cured by the executor's power of sale given in the will. The publication constitutes an election by the executor to sell by means of publication of notice.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.35 renumbered as 4.38 January 1, 2009; Amended July 1, 2013)

4.39 SALE OF REAL PROPERTY

A. Contract for Sale. The real estate purchase agreement or other contract of sale shall be attached to the report of sale and petition for order confirming sale of real property.

B. Appearances of Counsel. In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney, except in those cases where the personal representative, guardian, or conservator is present and requests that the sale proceed.

C. Sale Contingencies. Except in exceptional circumstances, all contingencies contained within the real estate purchase agreement, with the exception of court confirmation itself, shall be removed prior to the date of the confirmation hearing. Before the sale is confirmed, counsel shall state for the record that this requirement has been satisfied. Where exceptional circumstances exist to justify a waiver of this requirement, counsel will obtain ex parte authorization to proceed prior to filing the petition.

D. Continuances. Sale confirmations will be continued only under the most exceptional circumstances. A motion for continuance must be made in open court.

E. Probate Code section 10308 requires that notice be given “to the purchasers named in the petition . . . .”

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.36 renumbered as 4.39 January 1, 2009)

4.40 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

Where full independent powers have not been granted, Probate Code section 10150 permits a representative to grant an exclusive listing for a period not to exceed ninety (90) days after obtaining the permission of court. To obtain such permission, the representative must file an ex parte petition setting forth, in detail, the property to be sold, the broker to be employed, the

terms of the exclusive listing agreement, and the factual reasons why such agreement is necessary and advantageous to the estate. A bare statement of "necessity and advantage" will not suffice.

In all cases, the ex parte order shall provide that a reasonable broker's commission, if any, will be determined by the court at the time of confirmation of sale.

(Adopted October 1, 1998; Rule 4.37 renumbered as 4.40 January 1, 2009)

4.41 BOND ON SALE OF REAL ESTATE

Petitions for confirmation of sale of real estate shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond (as provided in Probate Code section 8482) at the close of escrow. If no additional bond is required, or if bond is waived, that fact must be alleged. A secured promissory note taken as part of the consideration is personal property, and an additional bond must be fixed in the amount of such note plus whatever cash is paid. If additional bond is ordered, it must be filed prior to obtaining the court's signature on the order confirming sale.

(Adopted October 1, 1998; Rule 4.38 renumbered as 4.41 January 1, 2009)

4.42 BROKER'S COMMISSIONS - GENERAL RULE

A. The order confirming sale must show the total commissions allowed and any allocation agreed upon between brokers.

B. Upon confirmation of the sale of improved real property, the court will not allow a broker's commission in excess of six percent (6%), unless justified by exceptional circumstances. A commission of up to ten percent (10%) may be allowed for the sale of raw land.

C. A commission exceeding the normal schedule will be allowed only under the most unusual circumstances. Whenever possible, the written agreement of the affected beneficiaries should be obtained.

D. A broker bidding for his own account is not entitled to receive or share in a commission. (*Estate of Toy* (1977) 72 Cal.App.3d 392.)

(Adopted October 1, 1998; Rule 4.39 renumbered as 4.42 January 1, 2009)

4.43 DISPUTES ABOUT BROKERS' COMMISSIONS

Normally disputes concerning broker's commissions will be referred to the appropriate Board of Realtors for arbitration.

(Adopted October 1, 1998; Rule 4.40 renumbered as 4.43 January 1, 2009)

4.44 TANGIBLE PERSONAL PROPERTY

Commissions on sales of tangible personal property will be allowed only to individuals holding a broker's license authorizing them to deal in the type of property involved. A commission will be

allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the court's discretion and will not ordinarily exceed a total of ten percent (10%) of the sale price.

(Adopted October 1, 1998; Rule 4.44 renumbered as 4.47 January 1, 2009)

4.45 SALE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

On a sale of specifically devised or bequeathed real or personal property, fifteen (15) days notice of time and place of hearing of the return of sale must be given to the devisee or legatee, unless his/her consent to such sale is filed with the court.

(Adopted October 1, 1998; Rule 4.42 renumbered as 4.45 January 1, 2009)

INVENTORY, ACCOUNTS AND REPORTS

4.46 REPEALED

(Adopted October 1, 1998; Inventory and appraisal to show sufficiency of bond - Repealed July 1, 2013)

4.47 REPEALED

(Adopted October 1, 1998; Property tax certification to be filed with inventory appraisal - Repealed July 1, 2013)

4.48 REQUIRED FORM OF ACCOUNTS

A. Format of Accounts. All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, shall contain a summary or recapitulation showing:

- Period encompassed by the accounting.
- Amount of Appraisal, if first account. If subsequent account, amount chargeable from prior account.
- Amount of receipts, excluding capital items.
- Gains on sales or other disposition of assets (if any).
- Amount of disbursements, excluding capital items.
- Losses on sales or other disposition of assets (if any).
- Amount of property on hand.

A suggested form of summary is as follows:

SUMMARY OF ACCOUNT

The petitioner is chargeable and is entitled to the credits, respectively, as set forth in this summary of account. The attached supporting schedules are incorporated by this reference.

CHARGES

Amount of Inventory and Appraisal (or, if not the first account: Amount chargeable from Prior Account)	$_____
Receipts during Account Period (Schedule "A")	$_____
Gains on Sales (Schedule "B")	$_____
	=========
Total Charges $.....	$_____

CREDITS

Disbursements during account Period (Schedule "C")	$_____
Losses on Sales (Schedule "D")	$_____
Other credits: Property distributed; homestead of other property set apart (Schedule "E")	$_____
Property on Hand (Schedule "F")	$_____
	=========
Total Credits	$_____

B. Support of Summary. The summary should be supported by detailed schedules. The schedules of receipts and disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and indicate the appraised value.

C. Distribution to Trustee**.** 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 form of account should permit the court to determine if the personal representative has properly allocated receipts and disbursements between principal and income.

D. Income and Expenses Attributable To Real Property. In estates where real property is specifically devised, the accounting or a schedule submitted therewith should set forth both the income received from said real property and any expenses allocated thereto (such as taxes, insurance, and maintenance). (See *Estate of McSweeney* (1954) 123 Cal.App.2d 787.)

E. Waiver of Accounting. A detailed accounting may be waived by petition when all interested persons consent, are adult and competent. All waivers must be filed with the court or endorsed on the petition. The effect of the waiver is to make it unnecessary to provide financial details, with the exception of a detailed listing of the property to be distributed and its' value for distribution purposes. All other matters normally reported upon at the time an accounting is filed must be presented in the petition.

F. Account Waiver by Administrator/Trustee. The court will ordinarily not approve a waiver of accounting where the estate's administrator is trustee of a trust that is the sole or a primary beneficiary of the estate.

G. Description of Bonds in Accounts. In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property and a statement of any additional bond required.

CHAPTER 4
PROBATE DEPARTMENT

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.45 renumbered as 4.48 January 1, 2009; Amended July 1, 2013)

4.49 ALLEGATION RE: CLAIMS

Prior to filing the interim or final account, counsel are advised to review the court file to insure that all creditors' claims which may have been filed have been addressed in the interim or final account. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived, to allege merely that all claims have been paid. The claims filed must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection of claim and whether suit on the claim has been filed must be stated.

Known creditors, contacted pursuant to Probate Code sections 9050 to 9054, inclusive, must be listed, whether or not such creditors filed a claim against the estate. Notices of administration required by Probate Code section 9050 must be on file with the court prior to, or at the time of, the hearing on the petition for final distribution.

The foregoing allegations must appear in the final report even though they may have appeared in whole or in part in prior reports.

(Adopted October 1, 1998; Rule 4.46 renumbered as 4.49 January 1, 2009)

4.50 REPEALED

(Adopted October 1, 1998; Fees must be stated even though account waived - Repealed July 1, 2013)

4.51 PROPERTY TO BE DISTRIBUTED MUST BE LISTED

The petition for distribution must list and describe in detail all property to be distributed, individual values and the total value. The description must include any cash on hand and must indicate whether or not promissory notes are secured or unsecured. If any note is secured, the security interest must be described in detail. The petition must include a complete legal description of any real property to be distributed.

The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting incorporated in the petition by reference. Description by reference to the inventory is not acceptable.

The petition for distribution must also list and describe in detail each beneficiary's specific share of all property to be distributed.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.48 renumbered as 4.51 January 1, 2009)

4.52 ACCOUNT - DEBTS PAID WITHOUT VERIFIED CLAIMS - VOUCHERS

Even if a claim has not been filed, the court may, under Probate Code section 9154, approve the payment of a debt if the accounting shows that such debt was allowed during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the court and must be justified by allegations in a verified petition.

(Adopted October 1, 1998; Rule 4.49 renumbered as 4.52 January 1, 2009)

4.53 ALLEGATION RE CHARACTER OF PROPERTY

In all cases, a petition for distribution must contain an allegation as to the character of the property, whether separate or community.

If some portion of the assets consists of community property, the allegation must show whether the interest included is only the decedent's one-half (1/2) interest in the community property or 100 percent (100%) of the community property of both spouses. In the absence of an election under Probate Code section 13502 by the surviving spouse to include in the estate his/her one-half (1/2) interest in the community property, the court has no jurisdiction to order distribution of such interest.

(Adopted October 1, 1998; Rule 4.50 renumbered as 4.53 January 1, 2009)

4.54 DESCRIPTION OF DISTRIBUTEES

The names and present addresses of all persons who are affected by the petition, and whether they are adults or minors, must appear in the petition for final distribution.

(Adopted October 1, 1998; Rule 4.51 renumbered as 4.54 January 1, 2009)

4.55 COMPLIANCE WITH PROBATE CODE SECTION 9202

Before the court will authorize distribution there must be a showing of compliance with Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor decedent's spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child. In showing compliance with Probate Code section 9202, petitioner must give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death if there is reason to believe that “an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.” Additionally, the Franchise Tax Board must be given notice of the administration of the estate within ninety (90) days after the date on which letters are first issued to a general personal representative.

(Adopted October 1, 1998; Rule 4.52 renumbered as 4.55 January 1, 2009; Amended January 1, 2010)

4.56 THE DECREE OF DISTRIBUTION

The 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 will. The decree shall contain:

A. The distribution of property by named beneficiary, with a detailed list describing the property to be distributed to each beneficiary. Description by reference to the inventory is not acceptable. For distribution by reference to an attached exhibit, see rule 4.05.

B. For real property, the legal description and street address, if any, shall be stated.

C. If an intestate decedent who survived his/her spouse leaves no issue, the applicability of Probate Code sections 6402 and 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.

D. Decrees of Distribution Establishing Testamentary Trusts. Upon distribution the court must determine whether a valid trust has been created by a will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. Since the decree of distribution supersedes the will (*Estate of Callnon* (1979) 70 Cal.2d 150); *In re Lewis* (1969) 271 Cal.App.2d 371), 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. The pertinent provisions shall be set forth in the present tense and in the third person instead of quoting the will verbatim.

(Adopted October 1, 1998; Rule 4.53 renumbered as 4.56 and amended January 1, 2009)

4.57 RECEIPTS ON DISTRIBUTION

A receipt for property received by a distributee shall be signed by him/her personally. The court will not accept a receipt signed by an attorney-in-fact, except where there is a pre-existing durable power of attorney and a copy of the durable power of attorney is provided.

A receipt for property received by a distributee shall be specifically itemized, giving the distribution value of each asset and the total value of all property received. (Local Rules of Court, rules 4.52 and 4.56(A).)

(Adopted October 1, 1998; Rule 4.54 renumbered as 4.57 and amended January 1, 2009)

4.58 ACCOUNTING FOR RESERVE

The Court will approve the Ex Parte Petition for Final Discharge only after review of the filed Receipts and/or Declarations which document complete distribution or transfer of all property of the estate. If an Order for Final Distribution of an estate or trust includes a Reserve and the Receipts do not account for 100% of the Reserve, then the party must submit a declaration explaining specifically how the Reserve funds were expended.

(Original rule adopted October 1, 1998; Income tax certificate - Repealed July 1, 2010; New rule adopted July 1, 2017)

CHAPTER 4

PROBATE DEPARTMENT

ATTORNEY FEES AND PERSONAL REPRESENTATIVE COMMISSIONS IN DECEDENTS' ESTATES

4.59 FORMAT FOR REQUESTING FEES

An application for fees will not be considered unless the caption and prayer of the petition and the notice of hearing contain a reference to that application.

(Adopted October 1, 1998; Rule 4.56 renumbered as 4.59 January 1, 2009)

4.60 FEES TAKEN IN ADVANCE

There is no authority for the payment of fees in decedent's estates in advance of a court order authorizing the same.

(Adopted October 1, 1998; Rule 4.57 renumbered as 4.60 January 1, 2009)

4.61 ALLOWANCES ON ACCOUNT OF STATUTORY FEES

Allowance on account of statutory fees will be granted by the court only in proportion to the work actually completed, and ordinarily no more than fifty percent (50%) of the statutory fees will be allowed prior to the approval of the final account and the decree of final distribution. Until the final account is settled no part of the statutory fees will be allowed without a detailed description of services performed and remaining to be performed. An unsubstantiated claim that, for example, fifty percent (50%) of the requested work has been performed is not sufficient. Until the final account is settled, the court is unable to fix the total amount of statutory fees and any allowance made prior to that time must be low enough to avoid the possibility of overpayment.

The court will allow a preliminary award of statutory fees only for good cause shown and ordinarily only in conjunction with a preliminary distribution of the estate.

(Adopted October 1, 1998; Rule 4.58 renumbered as 4.61 January 1, 2009)

4.62 REPEALED

(Adopted October 1, 1998; Apportionment of Fees - Repealed July 1, 2013)

4.63 BASIS FOR STATUTORY FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts or in petitions for distribution accompanied by a waiver of accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.60 renumbered as 4.63 and amended January 1, 2009; Amended July 1, 2017)

4.64 DECLARATION RE: SEPARATE ATTORNEY'S AND EXECUTOR'S FEES

A. Fees may be awarded to a law firm of which a partner or shareholder is the personal representative only if an agreement not to participate in each other's compensation is first on file in the probate proceeding. Reference shall be made to its filing date in the final account.

B. Whenever the attorneys representing an estate and the executor of the estate are members of the same law firm and each is requesting a separate fee, but there is no specific provision in the will indicating the decedent/testator was informed of the possibility of separate fees, in addition to the declaration not to participate in fees, a declaration must be filed stating: 1) whether the decedent/testator was informed that there would be a separate fee for each in such situations; 2) whether the decedent/testator consented to that arrangement; and 3) what relationship existed between the attorney and the decedent/testator that would justify the receipt of separate fees as executor and as attorney in such a situation. The declaration must be served on all interested parties.

C. When counsel for the personal representative, or another member of counsel's law firm, is retained by the estate to represent it with respect to a civil matter, the personal representative shall first seek court approval of the fee arrangement or demonstrate to the court in the form of a declaration that the fee arrangement was reviewed by independent counsel for the estate.

(Adopted October 1, 1998; Rule 4.61 renumbered as 4.64 January 1, 2009)

4.65 FORMAT FOR REQUESTING EXTRAORDINARY FEES FOR ATTORNEYS AND PERSONAL REPRESENTATIVES IN DECEDENTS' ESTATES

A. Compensation for Extraordinary Services. An application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice of hearing contain a reference to that application. All requests must comply with California Rules of Court, rule 7.702, including the mandatory statement referenced therein.

B. Discretion of Court. The award of extraordinary fees and commissions is within the discretion of the court. Ordinarily, extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See *Estate of Walker* (1963) 221 Cal.App.2d 792.)

C. Standards. Counsel and Personal representatives are directed to California Rules of Court, rule 7.703. The court will look at the reasonableness and benefit to the interested parties in determining whether and what amounts of extraordinary fees will be allowed. The court does not interpret the Probate Code or the Local Rules as allowing payment for attorney's fees for services rendered by any non-attorney staff except for paralegals who demonstrate the qualifications referenced in Local Rule 4.66. 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 non-litigated matters.

D. Customary compensation limits. In reviewing requests for extraordinary fees, the court considers the amounts historically and customarily allowed in the community. As of July 1,

2017, the custom shall be to consider approval of attorney fees of $350 per hour. For services rendered prior to July 1, 2017 the previous customary rate of $200-$300 per hour applies. The court shall consider the skill level of the attorney and/or the complexity of the legal issues when determining an appropriate extraordinary fee. 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.

E. For paralegals meeting the standards referenced in rule 4.66, as of July 1, 2017, the custom shall be to consider approval of conforming paralegal fees up to $150 per hour. For services rendered prior to July 1, 2017 the previous customary rate of $85-$125 per hour applies.

F. As of July 1, 2017, the custom shall be to consider approving private professional fiduciary fees up to $120 per hour and $50 per hour for staff. For services rendered prior to July 1, 2017 the previous customary rate of $85 per hour by the fiduciary and $45 per hour for staff applies. Professional and staff services should not include routine overhead items, such as secretarial and word processing time; time spent scanning, faxing, telephoning; computer time (Lexis, Westlaw); calendaring hearings; copying of less than 50 pages; cost of office supplies; local travel, mileage and parking. 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.

G. All requests must clearly indicate who has performed the services for the extraordinary compensation requested.

H. The court will not automatically allow the maximum rates set forth herein. Litigated matters will be considered on a case by case basis.

(Adopted October 1, 1998; Rule 4.62 renumbered as 4.65 and amended January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

4.66 USE OF PARALEGALS

Pursuant to Probate Code section 10811, subdivision (b), section 2642, subdivision (a), section 8547, subdivision (d), and section 10953, subdivision (d), the use of paralegals to perform services of an extraordinary nature is permitted. No fees for paralegals will be granted unless the petition satisfies rule 7.703(e) of the California Rules of Court. The request for such fees must contain an itemized statement of services rendered by the paralegal.

(Adopted October 1, 1998; Rule 4.63 renumbered as 4.66 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

4.67 REPEALED

(Adopted October 1, 1998; Personal representative commission – Repealed July 1, 2017)

TRUSTS

4.68 TRUSTEES' ACCOUNTS

Accounts filed by trustees under authority of Probate Code section 16062 should conform to the requirements set out in rule 4.48 as well as Probate Code sections 1060 – 1064. If the trust is a testamentary trust, the starting balance of the first account must conform to the trustee's receipt filed on distribution of the assets of the decedent's estate.

Except for trusts that are subject to the continuing jurisdiction of the superior court (see Prob. Code, §§ 17300 – 17354), the court will order an accounting and report by a trustee only when an account is requested by someone beneficially interested in the trust. (Prob. Code, § 17200, subd. (b)(5).)

(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.65 renumbered as 4.68 and amended January 1, 2009)

4.69 BENEFICIARIES TO BE LISTED IN PETITION

All petitions involving a testamentary trust or an inter vivos trust under Probate Code section 17200 must set forth the names and last known address of all beneficiaries, whether their interests are vested or contingent – that is, all persons in being who shall or may participate in the income or corpus of the trust.

(Adopted October 1, 1998; Rule 4.66 renumbered as 4.69 January 1, 2009; Amended January 1, 2010)

TRUSTEE AND TRUSTEE'S ATTORNEY FEES

4.70 TRUSTEE FEES

Requests for trustee fees must be supported in the petition or in a separate verified declaration stating the nature, necessity, success, cost in time, detail of services performed, the value of the services believed to warrant additional fees, and the amount requested. Mere recitation of time spent, without more, is not adequate. In making this determination the criteria set forth in *Estate of Nazro* (1971) 15 Cal.App.3d 218 shall be applied. The court has discretion to require further justification for all trustee fees. Although the court will, as a general guideline, allow a fee of three-quarters (3/4) of one percent (1%) of fair market value per annum, court approval must nevertheless first be obtained in all instances where the amount of compensation is not expressly authorized in the trust instrument. Mere recitation of the three-quarters (3/4) of one percent (1%) guideline is not sufficient. Trustees who base their requests for compensation on this guideline shall include a second column in the accounting which shall indicate the fair market value of each trust asset next to the carry value. Fiduciaries who seek court approval of trustee fees are referred to rules 4.65 and 5.27 for the amounts customarily and historically allowed by the court.

This Rule only applies under the following circumstances: (1) a court-supervised trust; (2) a Petition under Probate Code section 17200 requesting that the court fix or allow payment or review the reasonableness of the trustee’s compensation; or (3) when the trustee is seeking the protection offered by court approval.

(Adopted October 1, 1998; Rule 4.67 renumbered as 4.70 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

CHAPTER 4

PROBATE DEPARTMENT

4.71 ALLOWANCE OF ATTORNEY FEES FOR TRUSTEE REPRESENTATION

Attorney fees for trustee representation will be allowed according to the work actually performed. In general, requests for attorney fees must be supported in a petition or in a separate verified declaration stating the specific nature, benefit, time expended, detail of services performed and the amount requested. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. In any situation in which approval of fees by the court is required, counsel are referred to rule 4.65 for fees customarily and historically allowed.

This Rule applies under the following circumstances: (1) a court-supervised trust; (2) a Petition under Probate Code section 17200 requesting that the court fix or allow payment or review the reasonableness of the attorney fees; or (3) when the trustee is seeking the protection offered by court approval.

(Adopted October 1, 1998; Rule 4.68 renumbered as 4.71 January 1, 2009; Amended July 1, 2013; Amended July 1, 2017)

MISCELLANEOUS

4.72 USE OF POST OFFICE BOX NUMBERS

Any documents which require the address of the fiduciary in any probate, conservatorship, or guardianship matter must provide a complete street address. The use of P.O. Box numbers or letters is not acceptable.

(Adopted October 1, 1998; Rule 4.69 renumbered as 4.72 January 1, 2009)

4.73 TRUSTEE'S BOND

Court Appointed Fiduciaries. When the court has appointed a fiduciary, the amount of the bond shall include "a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs" as set forth in the California Rules of Court, rule 7.207.

(Adopted January 1, 2010)