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COUNTY OF LOS ANGELES

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CHAPTER FOUR

PROBATE DIVISION RULES

GENERAL PROVISIONS

4.1 **APPLICABILITY OF RULES**

(a) Applicability of Rules. The rules of this Chapter (“Probate Division Rules”) apply to all actions and proceedings to which the Probate Code applies and do not apply to any other action or proceeding.

(b) Rules of Construction. To the extent that the Probate Division Rules may add to existing statutory provisions relating to the same subject matter, they must be construed so as to implement the purposes of those statutes.

(c) Jurisdiction. The Probate Division Rules are not intended to expand or restrict the court’s jurisdiction in proceedings under the Probate Code.

(Rule 4.1 new and effective July 1, 2011)

4.2 **EXCUSE FROM COMPLIANCE**

The court for good cause may waive the application of the Probate Division Rules in an individual case.

(Rule 4.2 new and effective July 1, 2011)

4.3 **PROBATE COURT INFORMATION**

(a) Filing. With the exception of the North District, all probate matters are filed and heard in the Central District at the Stanley Mosk Courthouse.

(b) Addresses and Telephone Numbers and Calendaring Information. The address, telephone number, and calendaring information for the Probate court is available online at www.lacourt.org.

(c) All documents filed in an existing case before the Probate Court must be filed with the designated Probate Court subsequent document filing coversheet.

(Rule 4.3 [7/1/2011, 5/17/2013, 7/1/2014] amended and effective January 1, 2017)

4.4 **PROBATE ATTORNEY NOTES**

(a) Probate Notes Available on the Web. “Probate Notes” are available in advance of a hearing at www.lacourt.org. The commonly used abbreviations in the Probate Notes are set forth in Appendix 4.A.

(b) Clearing Probate Notes. The “Matters To Clear” section of the Probate Notes informs the parties of additional documents that are necessary to justify approval of the petition. Counsel must clear the items noted under the “Matters To Clear” section no later than 3:30 p.m. of the second court day preceding the hearing date.

(c) Failure to Clear Probate Notes. If the Probate Notes are not timely cleared, the court will continue the hearing, place the matter off calendar, deny the matter without prejudice, or take other action it deems necessary.

(Rule 4.4 [7/1/2011, 5/17/2013] amended and effective January 1, 2017)

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4.5 PROBATE CASE AND DOCUMENT COVER SHEET

The first paper filed by the petitioner in an action or proceeding must be accompanied by a Probate Case Cover Sheet and Certificate of Grounds for Assignment to District, form “PRO 010.”

A Probate Subsequent Document Filing Coversheet, form “PRO 037”, is required when filing any document(s) within an existing court case, including documents in support of or in opposition to a petition, motion, or order that is being considered by the court. A single “PRO 037” is required when filing multiple documents concurrently, within the same case.

All Probate Division forms are located at website “lacourt.org/forms/probate.”

(Rule 4.5 new and effective January 1, 2018)

4.6 **RESERVED**

4.7 **RESERVED**

4.8 **RESERVED**

HEARINGS, *EX PARTE* PROCEDURES, AND TRIALS

4.9 SETTING OF PROBATE MATTER

A petition requiring a hearing will be assigned by the clerk at the time of filing. The petitioning party must insure that a hearing date has been assigned. A request for an early setting must be accompanied by a declaration of urgency. Such requests will be granted only if good cause has been shown; the convenience of counsel or a party does not constitute good cause.

(Rule 4.9 [7/1/2011] amended and effective January 1, 2017)

4.10 RESETTING PETITION

A request to reset a petition previously placed off calendar must be filed through an *ex parte* application. Supplemental papers setting forth the current status of the case must be presented at the time of the request.

(Rule 4.10 [7/1/2011] amended and effective January 1, 2017)

4.11 PROBATE LAW AND MOTION

(a) Setting Hearing for Law and Motion. Law and motion and discovery matters are heard Monday through Friday at 10:00 a.m. in the Central District and on Thursdays at 8:30 a.m. in the North District. In the Central District, the moving party must call the courtroom to reserve a motion hearing date and place the reserved date on the cover page of the motion.

(b) Oppositions, Joinders, and Replies. In the Central District, an opposition, reply, or other paper related to the motion may not be filed directly in the courtroom assigned to the case for hearing.

(Rule 4.11 [as CENTRAL DISTRICT - PROBATE LAW AND MOTION 7/1/2011, 5/17/2013]
amended and effective January 1, 2017)

4.12 *EX PARTE* PROCEDURES

(a) Timing. Any *ex parte* application and supporting documents must be filed no later than 10:00 a.m. the court day before the application is to be heard. Any written opposition must be filed by 8:30 a.m. the day of the hearing. A party filing an opposition later than 4:00 p.m. the day before the hearing must submit a courtesy copy to the court.

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The applicant must appear and present a copy of the proposed order on the hearing date.

All documents and required courtesy copies must be brought to the Probate Division Clerk's Office by 8:30 a.m. on the day of the hearing. Parties and attorneys appearing for the hearing must report to the Probate Division Clerk's Office by 8:30 a.m. on the hearing date.

(b) Preliminary Considerations:

(1) Payment of Filing Fees. A party must pay the filing fee before the court will review the *ex parte* matter.

(2) Special Notices. The *ex parte* application, petition or motion must include an allegation that special notice has been given, has not been requested, or a written waiver of special notice has been filed as required by California Rules of Court, rule 7.55.

(c) Ex Parte Procedure. California Rules of Court, rule 3.1200 *et seq.*, must be followed for all *ex parte* applications.

(1) Emergency Ex Parte Matter. The court may set a hearing on an application for *ex parte* relief seeking immediate action where there is an opposition to the request.

(2) Drop-off Ex Parte Matter. *Ex parte* applications not seeking immediate action will be accepted for review as permitted by statute. These *ex parte* applications should be marked on the initial page as "drop-off review only" and they will be reviewed by the court within five court days.

(3) Temporary Conservatorships and Guardianships. A petition for appointment of a temporary conservator or guardian, absent exigent circumstances, shall be set for hearing not less than five court days after filing.

(4) Application for Nunc Pro Tunc Order. An application for a *nunc pro tunc* order may be presented *ex parte*.

(5) Telephonic Appearance. An applicant seeking an *ex parte* order choosing to appear by telephone must comply with California Rules of Court, rule 3.670(d) and Local Rule 3.6(d).

(Rule 4.12 [7/1/2011, 5/17/2013, 1/1/2014, 1/1/2017] amended and effective January 1, 2018)

4.13 PROBATE HEARINGS CANNOT BE ADVANCED

When a trust or decedent's estate matter has been set for hearing, or the hearing has been noticed and then continued to a definite date, the hearing will not be advanced to an earlier date. Additionally, the matter will not be heard on an earlier date by filing a new petition or an amended petition.

(Rule 4.13 new and effective July 1, 2011)

4.14 CONTINUANCE OF NON-TRIAL MATTERS

(a) Matters Not Ready for Hearing. If there has been no prior continuance, the court will usually continue for at least four weeks a matter that is not ready for hearing. A matter will be considered not ready for hearing when the Probate Notes state that there are unresolved procedural or factual issues, other than issues designated as "JTD" for the court to determine.

If there are unresolved procedural or factual issues appearing in the Probate Notes on the second continued date, the matter will be placed off calendar or denied without prejudice, unless an oral motion for continuance is granted by the court.

(b) Continuance Pursuant to Stipulation. Matters will not be continued by stipulation of counsel without recommendation of the Probate Attorney or order of the court.

(c) Notice of Continued Matter. If a petition was properly noticed, new notice of the continued date is not required unless specifically ordered by the court. This rule does not apply to notice by citation.

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(Rule 4.14 new and effective July 1, 2011)

4.15 TRIAL ON CONTESTED MATTERS IN CENTRAL DISTRICT

(a) Trial Setting. A contested matter will be set for trial. Counsel are required to provide the court with reasonable and accurate time estimates for trial. If the time estimate of either party is exceeded, the court may, in its discretion, deem the case submitted, declare a mistrial, or continue the matter to a new trial date.

(b) Joint Trial Statement.

(1) Meet and Confer. No later than thirty calendar days before the date set for trial, counsel must meet and confer, in person, in good faith to prepare a Joint Trial Statement. Although the petitioner has the duty to initiate the meet and confer process, the responding party(ies) must initiate it if the petitioner fails to timely do so. Both counsel are subject to imposition of monetary and/or other appropriate sanctions if the meet and confer process is not completed.

(2) Filing Joint Statement. The Joint Trial Statement must be filed and served on all parties no later than ten calendar days before the trial date.

(3) Filing Separate Statement. In the rare case where the parties, after good faith attempts to do so, are unable to agree on a Joint Trial Statement, each party shall file and serve on all other parties a Separate Trial Statement no later than ten calendar days before the trial date.

(4) Extension of Time. Compliance may be extended only by order of the court.

(c) Contents of Joint Trial Statement. The Joint Trial Statement or Separate Trial Statement must contain the following:

(1) Joint Statement Compliance. If the parties have failed to prepare and file a Joint Trial Statement, the Separate Trial Statement must summarize attempted compliance activity, including dates of meetings or discussions and total time spent in attempts to reach compliance;

(2) Expedited Presentation of the Case. The Statement must address in detail the use of summaries or statements, or other expedited means of presenting evidence including stipulated facts, agreements regarding admission of evidence, and agreements re summary of testimony;

(3) Factual Information. The Statement must include a complete and objective factual statement of the case including, as applicable a) the date of decedent's death and date of any wills or codicils, b) the date of appointment of personal representative/guardian/conservator, c) the names, ages and relationships of all persons relevant to the proceeding and names of counsel, d) the date and substance of any prior orders of the court, e) the filing date and substance of any documents pertinent to any contested issue (*e.g.*, inventories), f) the amount of any bond, and g) other relevant information.

(4) Uncontested Issues. The Statement must list and summarize all uncontested issues.

(5) Statement of Contested Issues. The Statement must include a concise statement of every contested issue. If the parties cannot agree on what the contested issues are, each issue must be noted with an identification of which party believes the issue to be contested and which party does not.

(6) Discussion of Contested Issues. For each contested issue, the Statement must present a brief but comprehensive discussion which includes the following:

a) Any factors relevant to that issue;

b) A list of all documents, schedules, or summaries to be offered at trial regarding the issue, a summary of each document's content and purpose, and a copy of each appraisal and expert report to be offered at trial;

c) For each percipient or expert witness that any party intends to call at trial, the witness' name and business address, a brief statement of the substance of the witness' testimony,

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and a time estimate for direct and cross-examination. This provision does not apply to any witness objectively and in good faith anticipated to be called solely for the purpose of impeachment; and

d) Any points and authorities relevant to a particular contested issue.

(d) Continuance. A trial may be continued for good cause only by order of the court. If all parties waive notice, an application for continuance may be presented *ex parte*. The application must be made at the earliest possible time and in no event less than one week prior to trial. A party's need for additional time to prepare for trial or to discuss settlement does not constitute good cause.

(e) Motions in Limine. Motions *in limine* must comply with the notice provisions of Code of Civil Procedure section 1005 and must be set for hearing no later than the first day of trial.

(Rule 4.15 [7/1/2011, 5/17/2013, 1/1/2014] amended effective January 1, 2017)

4.16 **RESERVED**

4.17 **RESERVED**

4.18 **RESERVED**

4.19 **RESERVED**

CONSOLIDATING AND RELATING CASES

4.20 **RESERVED**

(Rule 4.20 [as TRANSFER FROM ONE DISTRICT TO ANOTHER 7/1/2011]
REPEALED and effective May 17, 2013)

4.21 **CONSOLIDATION OF CASES**

When two or more petitions have been filed concerning the same decedent's estate, conservatee, minor or trust, the court may, in its sole discretion and on its own motion, consolidate them into the case assigned the lowest case number.

Where cases have been consolidated, subsequent documents must be filed using the case number designated by the court in the consolidation order.

(Rule 4.21 [as CONSOLIDATION AND/OR TRANSFER OF CASES 7/1/2011]
title & text amended and effective May 17, 2013)

4.22 **RELATED CASES**

(a) Related Probate Cases. Two or more probate cases are related where they concern the same decedent, conservatee, ward, settlor/trustor or other substantially affected parties. Counsel must inform the court of all such related cases by filing and serving a notice of related cases in each case or by orally informing the court on the record. Related probate cases shall be transferred to the department to which the lead case is assigned, except where good cause is shown to the contrary. The first filed case shall be the lead case.

(b) Relating Probate Cases to Non-Probate Cases. The relation of non-probate cases to probate cases is governed by Local Rule 3.3(f).

(Rule 4.22 new and effective July 1, 2011)

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- 4.23 **RESERVED**
- 4.24 **RESERVED**
- 4.25 **RESERVED**
- 4.26 **RESERVED**

PLEADINGS

4.27 SUPPLEMENTAL AND AMENDED PLEADINGS

A “supplemental pleading” sets forth additional allegation after the original notification is filed, usually in response to Probate Notes. An “amended pleading” seeks new or additional relief from the original petition. An amended pleading requires the same notice (including publication) as the pleading it amends and must be filed and set for hearing as though an original petition. California Rules of Court, rule 7.104, governs the signing and filing of amended and supplemental pleadings.

(Rule 4.27 new and effective July 1, 2011)

4.28 OPPOSITION AND REPLY PLEADINGS

The Probate Code allows any interested person to appear and make a response or objection orally or in writing at or before the hearing. If a response or an objection is made at the time of the first hearing on a petition, the court will ordinarily continue the hearing to allow objections or a response to be filed and to allow the petitioner to file a reply to the response or the objections.

If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.

(Rule 4.28 new and effective July 1, 2011)

4.29 ORDERS

(a) Orders in Contested Proceedings. Proposed orders must be separately lodged and not attached to the moving papers.

(b) Preparation of Order. Counsel must prepare proposed orders and decrees of the court where no Judicial Council form order is available.

(c) Probate Volunteer Panel (“PVP”) Attorney’s Approval of Order. For matters where the court has appointed a PVP Attorney, the PVP Attorney must indicate approval of the proposed order as to form by signing at the end of the proposed order. If the PVP Attorney’s signature is not obtained, a proof of service of the proposed order on the PVP Attorney must be submitted to the court with the proposed order.

(d) Content of Probate Order:

(1) Content of Order. The proposed order must contain the name of the judicial officer presiding, the date of the hearing, the department, and the names of all persons appearing at the hearing. The order must set forth, with the same particularity required of judgments in civil matters, all matters ruled upon by the court. No text may appear after the signature of the judicial officer.

(2) Order for Probate of Lost Will. The Judicial Council form “Order for Probate” must be used for an order probating a lost will with an attachment setting forth the terms of the lost will and/or codicil.

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(3) Order Involving Real Property. An order affecting real property must include: a legal description of the real property, the street address (if applicable), and the Assessor's Parcel Number ("APN").

(4) Order Settling Account. An order settling an account must state the beginning and ending dates of the account period and contain general language approving the account report. The order must contain a statement of the balance of property on hand as reflected in the Summary of Account and the amount of cash included in the balance.

(5) Order Providing for Periodic Payments. An order providing for periodic payments must contain the following language "commencing _____ and continuing not to exceed _____ months."

(e) Riders and Exhibits. When an order has attachments, the place for the judge's signature must appear at the end of the last attachment and an appropriate notation must be made in the body of the order indicating that the signature is located at the end of the last attachment.

(f) Nunc Pro Tunc Order:

(1) Nunc Pro Tunc Order. When a signed order contains a clerical error, a party may obtain a corrected order by filing an application and presenting a proposed *nunc pro tunc* order correcting the error. The application for a *nunc pro tunc* order must include a supporting declaration and a proposed order.

(2) Format of Order. The *nunc pro tunc* order must state substantially the following: "Upon the consideration of the application of _____, to correct a clerical error, the (identify the order to be corrected, giving the title and date thereof) is corrected, by striking the following (set forth the portion to be corrected) and by inserting in lieu thereof the following (set forth the corrected language)".

To prevent confusion, the proposed order must strike the entire erroneous clause or sentence and then restate it as corrected.

(Rule 4.29 [7/1/2011] amended and effective January 1, 2017)

4.30 ISSUANCE OF LETTERS TO PERSONAL REPRESENTATIVES OF DECEDENTS' ESTATES

(a) Issuance of Letters. Where the court orders issuance of letters (testamentary/administration) to the personal representative of a decedent's estate, the executed letters, the order of appointment, bond (if ordered), the Duties and Liabilities of the Personal Representative form, and the Confidential Supplement To Duties and Liabilities of Personal Representative form must be submitted to the clerk for issuance of the letters.

(b) Multiple Representatives. When the court appoints multiple representatives, the court will issue Letters jointly to all of the personal representatives appointed.

(c) Confidential Supplement to Duties and Liabilities of Personal Representative. The Confidential Supplement To Duties and Liabilities of Personal Representative form must be submitted by each personal representative and must contain the personal representative's date of birth and driver's license number. This confidential form must not be placed in the public court file.

(Rule 4.30 new and effective July 1, 2011)

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- 4.31 **RESERVED**
- 4.32 **RESERVED**
- 4.33 **RESERVED**
- 4.34 **RESERVED**

**PROVISIONS COMMON TO VARIOUS CASE TYPES
AND MISCELLANEOUS PROCEEDINGS**

4.35 **MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR A FIDUCIARY**

When an attorney files a motion to withdraw as attorney of record for a fiduciary, service must be made by citation. The citation must be served in the manner provided in Code of Civil Procedure sections 415.10 or 415.30. If the fiduciary resides outside of California, service may also be made in the manner provided in Code of Civil Procedure section 415.40.

(Rule 4.35 new and effective July 1, 2011)

4.36 **NOTICE**

(a) Party Giving Notice. Where notice is required, counsel must file the notice form and proper proof of service with the court.

(b) Undelivered Notice. When notice is returned as undeliverable, the envelope containing such notice must be placed in the court's file.

(Rule 4.36 new and effective July 1, 2011)

4.37 **PETITION TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY**

(a) Caption and Setting. The caption of the petition must reference Probate Code section 850. Because of the 30-day notice requirement in Probate Code section 851, petitions will not be set for hearing sooner than six weeks from the date of filing. If counsel anticipates that there may be difficulties in completing the required service, a later date should be requested to avoid continuances.

(b) Notice of Hearing. The notice of hearing must contain the following:

(1) A description of the subject property sufficient to provide adequate notice to any party who might be interested in the property. For real property, the notice must state the street address or, if none, a description of the property's location.

(2) A statement advising any person interested in the property that he or she may file an answer to the petition.

(Rule 4.37 new and effective July 1, 2011)

4.38 **APPRAISAL OF PERSONAL PROPERTY BEFORE SALE**

When a party requests an order approving the sale of personal property, he or she must file an appraisal of the property.

An Inventory and Appraisal or a letter appraisal from the probate referee will satisfy this requirement.

(Rule 4.38 new and effective July 1, 2011)

4.39 **SALE OF REAL PROPERTY SUBSEQUENT TO PUBLICATION**

(a) Published Notice for Private Sale of Real Property Estate. If the Report of Sale and Petition for Order Confirming Sale of Real Property is filed prior to the date of sale stated in the notice, or if it

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indicates that the private sale took place prior to the date stated in the published notice, the sale will not be confirmed or the petition will be denied without prejudice.

(b) Sale of Specifically Devised Real Property. When a Report and Petition for Confirmation of Sale of Real Property is filed and set for hearing, notice of the time and place of hearing must be given to the specific devisee(s) unless the devisee(s)'s consent to the sale is filed.

(c) Increased Bid Form. When there is a successful overbid in open court on a sale of real property, counsel must complete and the successful bidder must sign and file a "Bid In Open Court on Sale of Real Property" form.

(d) Real Estate Commission. The court will not permit a commission to an agent, broker, or auctioneer in excess of five percent for the sale of improved real property unless justified by exceptional circumstances. A commission not to exceed ten percent will be permitted for the sale of raw land.

(Rule 4.39 new and effective July 1, 2011)

4.40 BORROWING AND REFINANCING

(a) Petition. A petition to borrow money or refinance property must include the following information:

- (1) The existing encumbrances on the estate's property, including whether there is a purchase money mortgage;
- (2) The efforts made to obtain the most favorable financing;
- (3) The estate's ability to service the debt;
- (4) All loan costs, including but not limited to, loan discount points and broker's commission/fee; and
- (5) The sufficiency of the existing bond and the need for an additional bond, if any.

(Rule 4.40 new and effective July 1, 2011)

4.41 REDUCTION AND WAIVER OF BOND

(a) Change in Bond or Substitution of Surety. A court order is required to reduce the amount of the bond or to substitute a surety.

(b) Description of Bond in Account. The total amount of the bond posted, a statement on its sufficiency, and whether additional bond or a reduction in bond is needed must be set forth in the petition that accompanies an account.

(c) Request for Bond Waiver in Decedent's Estate Proceeding. In all cases where a bond is not waived in the will, or the proposed personal representative resides out-of-state, and a waiver of bond is being requested, the petitioner must submit a declaration which states: (1) the number of the estate's unsecured creditors and its estimated liability to such creditors; (2) whether the estate is solvent; (3) estimated tax liabilities of the estate, if any; (4) the amount of any known contingent liabilities; and (5) the due diligence performed to ascertain this information.

(d) Appearance Required in Decedent's Estate Proceeding. When a bond for the proposed personal representative is not waived in the will, the court may require an appearance at hearing for a bond waiver request.

(Rule 4.41 new and effective July 1, 2011)

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4.42 BANK STATEMENT AND BLOCKED ACCOUNT

(a) Decedent's Estate and Trust. In decedent's estate and trust proceedings, all interim accounts must include an original bank statement showing the balance as of the ending date of the account period.

(b) Reconciliation. If the bank statement balance does not agree with the balance as reported in the account, the fiduciary must provide a written reconciliation.

(c) Confidential Financial Statement. If a bank account statement contains the estate's or trust's tax identification number or other personal information that would not ordinarily be disclosed in the account, inventory and appraisal or other non-confidential pleading filed in the action, the account statement must be filed under a separate case cover sheet and the caption must state "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters so that it can be kept separately from the public record.

(d) Blocked Account. When the court has ordered estate or trust assets deposited in a blocked account in a financial institution or trust company, the petition for approval of account must state that funds or securities are on deposit in a blocked account and must provide proof from the institution that no funds may be withdrawn without a court order.

(Rule 4.42 new and effective July 1, 2011)

4.43 PAYMENT AND REIMBURSEMENT OF COSTS

(a) Non-Reimbursable Costs. The following items are not allowable as costs for reimbursement to an attorney or personal representative:

- (1) Photocopies;
- (2) Postage;
- (3) Secretarial services;
- (4) Local telephone expense; and
- (5) Local travel and mileage.

(b) Discretionary Reimbursement. The following items are allowable as costs for reimbursement:

- (1) Air courier and local messenger services;
- (2) Long distance telephone expenses;
- (3) Long distance travel;
- (4) Extraordinary postage and copying;
- (5) Parking; and
- (6) Interpreter and translation services.

(Rule 4.43 new and effective July 1, 2011)

4.44 FINDINGS AS TO CHARACTER OF PROPERTY

(a) Community or Quasi-Community Property Character of Assets. A Spousal or Domestic Property Petition or a Petition for a Particular Transaction filed per Probate Code section 3100 *et seq.* that seeks a determination of the community or quasi-community property character of property must contain the following information:

- (1) The date and place of marriage;
- (2) A description and approximate values of real and personal property owned by the decedent or person lacking legal capacity on the date of marriage and a statement concerning the property's disposition, if any;
- (3) The decedent's or person lacking legal capacity's net worth at the time of marriage;

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(4) A description and approximate values and dates of receipt of all property received by the decedent or person lacking legal capacity, by gift, devise, joint tenancy, proceeds of life insurance, and other beneficiary designation after the date of marriage and a statement concerning the property's disposition, if any;

(5) Dates of the decedent's or person lacking legal capacity's residency in California and information concerning the character of property acquired during periods of non-residency;

(6) When the petition affects title to real property, a statement concerning the legal title to the real property at the decedent's date of death or at the date of filing the Petition for a Particular Transaction pursuant to Probate Code section 3100 *et seq.*;

(7) When the petition concerns Individual Retirement Accounts ("IRA"), life insurance policies or other assets that have a beneficiary designation taking effect on death or a "pay on death" designation, the status of that designation as of the decedent's date of death or date of filing the Petition for a Particular Transaction pursuant to Probate Code section 3100 *et seq.*, including the names of beneficiaries or payees; and

(8) Facts upon which the claim of community or quasi-community property is based.

(b) Supporting Documents. Copies of documents supporting a claim of community or quasi-community character of subject property must be attached to the petition. Copies of written agreements between the decedent and the surviving spouse, or between the spouses, for purposes of proceeding brought pursuant to Probate Code section 3100 *et seq.*, providing for a non-*pro rata* division of the aggregate value of the community property or quasi-community property, or both, must be attached. Alternatively, the petition must include a statement that such agreements do not exist.

(c) Copies of Deeds. Where the petition affects title to real property, a copy of the deed(s) showing vesting at the decedent's date of death or at the time of filing of the Petition for a Particular Transaction pursuant to Probate Code section 3100 *et seq.* must be attached to the petition.

(d) Will as Basis for Passing Decedent's Property. Where the surviving spouse's or domestic partner's entitlement to the decedent's interest in property is based upon the decedent's will, and the will has not been offered for or admitted to probate, the petitioner must allege that the will has been filed with the court for safekeeping.

(e) Petitioner Is Not the Spouse or Domestic Partner. Where the petitioner is the personal representative or the conservator of the spouse or domestic partner, a copy of letters evidencing the appointment must be attached to the petition.

(f) Spousal or Domestic Property Petitions, Findings Regarding Character of Property. For spousal or domestic property petitions:

(1) Unless alleged and proved, the court will make no findings as to whether the property is community or quasi-community.

(2) Unless alleged and proved, the court will make no finding as to whether the property is separate property.

(Rule 4.44 new and effective July 1, 2011)

4.45 AFFIDAVITS FOR REAL PROPERTY OF SMALL VALUE

When an Affidavit for Real Property of Small Value is filed pursuant to Probate Code section 13200, one of the following must be attached to the affidavit:

(a) Decedent Died Testate. If the decedent died testate, a statement that the decedent died testate and an executed copy of the will; or

(b) Decedent Died Intestate. If the decedent died intestate, a statement identifying the relationship of the heir(s) which establishes the affiant's claim to entitlement.

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(Rule 4.45 new and effective July 1, 2011)

- 4.46 **RESERVED**
- 4.47 **RESERVED**
- 4.48 **RESERVED**
- 4.49 **RESERVED**

DECEDENT’S ESTATE PROCEEDINGS

4.50 APPOINTMENT OF SPECIAL ADMINISTRATOR

(a) Notice. Unless good cause is shown, petitions for special letters of administration will not be granted without notice to the surviving spouse, domestic partner, the person nominated as executor, and any other person whom the court in its discretion determines is entitled to notice.

(b) Preference. In making the appointment of a special administrator, the court will give preference to the person(s) entitled to letters testamentary or of administration. If a contest is pending, the court may appoint a disinterested person or the Public Administrator as special administrator.

(c) Bond. The special administrator, including a named executor, will be required to post a bond unless the court finds that the petition contains sufficient allegations to justify waiver.

(Rule 4.50 new and effective July 1, 2011)

4.51 DECLINATION AND CONSENT TO ACT

(a) Declination of Named Executor. If a named executor declines to act, that person’s signed declination to act must be filed with the court.

(b) Consent to Act. If a petition requests appointment of a person other than or in addition to the petitioner, that person’s signed consent to act must be filed with the court.

(Rule 4.51 new and effective July 1, 2011)

4.52 APPOINTMENT OF PUBLIC ADMINISTRATOR

(a) Appointment. Persons interested in having the Public Administrator appointed as personal representative should contact the Office of the Public Administrator and County Counsel’s Office.

(b) Notice. In cases where it appears that the Public Administrator has priority, notice to the Public Administrator and County Counsel must be given.

(Rule 4.52 new and effective July 1, 2011)

4.53 CERTIFICATION OF WILLS AND CODICILS BY SELF-REPRESENTED PARTY

A self-represented party must attach a copy of the will or codicil with a clerk’s filing stamp when filing the Proof of Subscribing Witness or Proof of Holographic Instrument form. A self-represented party may not certify the photographic copy of the will or codicil by completing the Attorney Certification on the Judicial Council form.

(Rule 4.53 new and effective July 1, 2011)

4.54 FOREIGN LANGUAGE WILL

If the will or codicil is in a foreign language, a translation of the document authenticated by a declaration from a Judicial Council certified or registered translator, must be attached as an exhibit to the petition.

(Rule 4.54 new and effective July 1, 2011)

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4.55 SUBSEQUENT PETITION FOR PROBATE

Wills and codicils not included in a petition for probate of a will must be presented for probate in an amended or subsequent petition and new notice must be published and served.

(Rule 4.55 new and effective July 1, 2011)

4.56 NOTICE TO CREDITORS

(a) Known and Reasonably Ascertainable Creditors. All known and reasonably ascertainable creditors must be notified of the administration of the estate using Judicial Council Notice of Administration To Creditors form. The notice(s) with proof of service must be filed with the court.

(b) Claims by Public Entities. Claims by public entities, including Medi-Cal, the California Victim Compensation and Governmental Claims Board, and Franchise Tax Board will not be barred unless actual notice is sent to the entity and the applicable statute of limitations has expired.

(Rule 4.56 new and effective July 1, 2011)

4.57 CREDITOR'S CLAIMS

(a) Creditor's Claim by Personal Representative or Representative's Attorney

(1) Personal Services. A creditor's claim by a personal representative or by the representative's attorney for fees for services personally rendered to the decedent must attach detailed invoices or other itemization of such services.

(2) Reimbursement for Debts. A creditor's claim by a personal representative or his/her attorney for reimbursement of debts or funeral expenses of the decedent must attach detailed invoices or other evidence of payment.

(b) Funeral and Interment Claims. Interest on creditor's claims for funeral interment will be awarded commencing 60 days after the date of death.

(Rule 4.57 new and effective July 1, 2011)

4.58 NOTICE OF PROPOSED ACTION

(a) Notice of Proposed Action. A Notice of Proposed Action must contain a description of the proposed action in reasonably specific terms. If the proposed action involves a sale or exchange of real property or option to purchase real property, the notice must include the material terms of the transaction including the sales price and commission(s) payable to the broker(s).

(b) Notice Filed. The Notice of Proposed Action, together with the proof of service, must be filed with the court.

(c) Petition for Distribution. A petition for distribution must contain a description of the actions taken by the personal representative under the Independent Administration of Estates Act. The personal representative must allege whether a Notice of Proposed Action was given, notice was waived, or consent was given by all affected parties.

(Rule 4.58 new and effective July 1, 2011)

4.59 PETITION FOR FAMILY ALLOWANCE

(a) Ex Parte Petition. When a petition for family allowance is presented *ex parte*, and the petitioner is not the personal representative, the personal representative's consent to the allowance or waiver of notice must be filed with the petition.

(b) Limitation on Period of Family Allowance. If filed before the Inventory and Appraisal, an order for family allowance will not be made for a period exceeding six months unless good cause is shown.

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(c) Reasonableness and Eligibility. The petition for family allowance must state:

(1) The estimated monthly income of the proposed recipient, including any government benefits;

(2) If the surviving spouse is the petitioner, the spouse's income from sources other than the estate and an itemization of the spouse's separate property;

(3) For a petition seeking payments of \$1,000 or more per month, an itemized estimate of monthly expenses; and

(4) When such itemized expenses include payments for real property, a statement showing how title to subject real property is vested.

(Rule 4.59 new and effective July 1, 2011)

4.60 HEIRSHIP DETERMINATION

(a) Notice of Hearing. A notice of hearing and a copy of the petition must be served on the affected parties and their attorneys of record.

(b) Notice to Attorney General. When notice to the Attorney General is required, a notice of hearing and a copy of the petition must be sent to the Attorney General, Charitable Trusts Section 1515 K. Street, Sacramento, CA 94244-2550.

(c) Contents of Petition. The petition must identify (by name, address and relationship to the decedent) the persons entitled to distribution of the decedent's estate. If the personal representative is the petitioner, the petition may propose alternative entitlements.

(d) Genealogical Chart. The petition must include a genealogical chart establishing the relationships between the decedent and the decedent's heirs.

(e) Escheat. When the petition for probate states that heirs are unknown, a potential for *escheat* exists and the petitioner must give notice to the California Attorney General.

(Rule 4.60 new and effective July 1, 2011)

4.61 PETITION FOR INSTRUCTIONS

(a) Limitations. The use of a petition for instructions by personal representatives is limited to those matters for which no other procedure is provided by statute.

(b) Specifying Instruction. The petition must state the instruction requested and must not be stated in the alternative.

(Rule 4.61 new and effective July 1, 2011)

4.62 DAMAGES FOR WRONGFUL DEATH/PHYSICAL INJURY OR PROPERTY DAMAGE

(a) Wrongful Death Damages. Damages for wrongful death are held by the personal representative for the benefit of the statutory beneficiaries and are not part of the estate.

(b) Physical Injury or Property Damages. Damages for physical injury to the decedent or property damage are part of the estate. The cause of action or the settlement proceeds must be inventoried.

(c) Court Approval. Compromise or settlement of wrongful death or injury claims of the decedent must be approved by the court, unless the personal representative compromises or settles the claim or action under the authority of the Independent Administration of Estates Act.

(Rule 4.62 new and effective July 1, 2011)

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4.63 PETITION FOR PRELIMINARY AND FINAL DISTRIBUTION

(a) Schedule of Creditors' Claims. A petition for preliminary and final distribution must state, for each claim presented:

- (1) Claimant's name;
- (2) Date of filing of the claim;
- (3) Nature of the claim;
- (4) Amount of the claim;
- (5) Disposition of the claim; and
- (6) If the claim was rejected, the date of service of the rejection and whether or not a lawsuit was filed.

(b) Medi-Cal Recipient. Petitions for distribution must state whether or not the decedent received Medi-Cal benefits or was the surviving spouse of a person who received Medi-Cal benefits. If such benefits were received, notice must be given to the Director of Health Services and the claim period must have expired before distribution will be made.

(c) Heir Confined in a Correctional Facility. A petition for distribution must state whether or not the personal representative or estate attorney knows or has 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 correctional facility. If distribution will be made to such a person, the petition for distribution must state that notice was given as provided in the Probate Code, and whether or not the California Victim Compensation and Government Claims Board has demanded collection of any outstanding restitution fines or orders.

(Rule 4.63 new and effective July 1, 2011)

4.64 PAYMENT OF COSTS OF ADMINISTRATION

A petition for final distribution or to terminate the proceeding must state that all charges for legal advertising, bond premiums, probate referee's services and costs of administration have been paid.

(Rule 4.64 new and effective July 1, 2011)

4.65 ALLEGATIONS REGARDING CREDITORS

Petitions for approval of account, waivers of account, or requesting distribution must state the efforts to locate known or reasonably ascertainable creditors and whether actual notice was given or required.

If actual notice to creditors was given the completed form of Notice of Administration To Creditors and a proof of service must be filed with the court. If there are no known or reasonably ascertainable creditors, the petition must so state.

(Rule 4.65 new and effective July 1, 2011)

4.66 MEDI-CAL NOTIFICATION

Petitions containing a request for distribution must allege notice to the Director of Health Services where required. Notice is not required, when neither the decedent nor the decedent's predeceased spouse, received Medi-Cal benefits, or when no claim will be made by the Department of Health Services because (1) the decedent died before June 28, 1981, (2) the decedent was under age 65 at date of death, (3) the decedent was survived by a spouse, minor child, or disabled child, or (4) the decedent's predeceased spouse died before June 30, 1993.

(Rule 4.66 new and effective July 1, 2011)

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4.67 ALLEGATION RE CHARACTER OF PROPERTY

In addition to those allegations required by California Rules of Court, Title 7, a petition for distribution must contain the allegations set forth in Local Rule 4.44(a) through (c) to establish the community or quasi-community character of assets. The allegations are not required if the surviving spouse is the sole heir or devisee. This rule also will apply when a portion of the estate is attributable to the decedent's predeceased spouse under Probate Code section 6402.5.

(Rule 4.67 new and effective July 1, 2011)

4.68 PROVISION RE SURVIVORSHIP

When a spouse's or domestic partner's right to take under a will is conditioned on survival for a specified period of time, a Spousal Or Domestic Partner Property Petition may be filed prior to the expiration of the survivorship period, but no order passing the property to the surviving spouse or domestic partner will be made prior to the expiration of the survivorship period.

(Rule 4.68 new and effective July 1, 2011)

4.69 DESCRIPTION OF DISTRIBUTEES

(a) Names and Addresses. The names and addresses of all persons who are present and future distributees of the estate and whether they are adults or minors must be stated in all petitions for distribution. If distribution will not be made directly to a beneficiary, the name, address and fiduciary capacity of the recipient must be stated.

(b) Age of Minors and Others. In all cases where property will be distributed to a minor, the minor's age and birth date must be stated in the petition and the accompanying order.

If a trust beneficiary will receive distribution as an adult upon reaching a specific age, the petition and order must state the age and birth date of the beneficiary.

(Rule 4.69 new and effective July 1, 2011)

4.70 ORDER ESTABLISHING TESTAMENTARY TRUSTS

(a) Appointment of Testamentary Trustee Prior to Distribution. Upon filing of a petition, the court may appoint a testamentary trustee before the decree of distribution is made.

(b) Order Establishing Testamentary Trust. An order establishing a testamentary trust must incorporate the terms of trust in its entirety. The terms of the trust must be set forth in the present tense and in the third person and not quote from the will.

(Rule 4.70 new and effective July 1, 2011)

4.71 DISTRIBUTION OF DEVISE TO MINOR OR FIDUCIARY

(a) Distribution to Minors. When a minor is to receive a distribution from a decedent's estate, the petition must state the minor's date of birth and the age for delivery of property to the minor if the distribution is to be delayed beyond the age of majority. The following also must be filed:

(1) Where a guardian of the estate is required, a certified copy of Letters of Guardianship and a declaration concerning the adequacy of the guardian's bond;

(2) Where the distribution does not exceed \$5,000 and the property is to be delivered to the minor's parent, the written assurance of such parent that the value of minor's estate does not exceed \$5,000; and

(3) Where the transfer is to be made to a custodian under the California Uniform Transfers To Minors Act, the written consent of the custodian.

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(b) Distribution to Court Appointed Personal Representative of a Decedent's Estate, Conservator of the Estate or Guardian of the Estate. If a beneficiary's distribution will be made to a personal representative of a decedent's estate, conservator of an estate or guardian of an estate, a certified copy of letters must be attached to the petition.

(Rule 4.71 new and effective July 1, 2011)

4.72 POST-DECEASED DISTRIBUTEES DISTRIBUTION

Where distribution will be made to the successors-in-interest of a post-deceased distributee pursuant to Probate Code section 13100 *et seq.*, an affidavit or declaration pursuant to Probate Code section 13101 must be filed, which includes the following:

(a) Post-Deceased Distributee Died Testate. If a post-deceased distributee died testate, a statement that the decedent died testate, and attaching an executed copy of the will;

(b) Post Deceased Distributee Died Intestate. If the post-deceased distributee died intestate, a statement identifying the relationship of the heir(s) which establishes the affiant's or declarant's claim to distribution.

(Rule 4.72 new and effective July 1, 2011)

4.73 ASSIGNMENT OR TRANSFER OF INTEREST IN ESTATE

(a) Notification to Court. If the personal representative knows of an assignment or transfer of an interest in the estate by an heir or devisee, a petition for distribution affecting that heir or devisee's interest in the estate must include an allegation concerning the specifics of the assignment or transfer.

(b) Written Assignment or Transfer of Interest. The written assignment or document of transfer, signed by the heir or devisee, must be filed with the court.

(c) Distribution "Care of" Attorney. The court will not order distribution of an heir's or devisee's interest in the estate to the "care of" his or her attorney unless the written consent of the heir or devisee is filed.

(Rule 4.73 new and effective July 1, 2011)

4.74 RECEIPT OF DISTRIBUTION

(a) Distributee Receipt. A receipt of distribution shall be signed by the distributee personally. A receipt signed by an attorney-in-fact must attach an executed copy of the power of attorney and a certification under penalty of perjury by the attorney-in-fact that the power of attorney is in full force and effect and authorizes said action.

(b) Recorded Deed or Order in Lieu of Distributee's Receipt. For real property, recordation of the order for distribution or the deed suffices as a receipt for distribution of the property.

(Rule 4.74 new and effective July 1, 2011)

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- 4.75 **RESERVED**
- 4.76 **RESERVED**
- 4.77 **RESERVED**
- 4.78 **RESERVED**
- 4.79 **RESERVED**

GUARDIANSHIP PROCEEDINGS

4.80 APPOINTMENT OF GUARDIAN

(a) Single Petition for Multiple Minors. A single petition for appointment of a guardian must be used for multiple minors if the minors are siblings and the same guardian(s) will be appointed for all of them.

(b) Notification Filed with Petition. A Notification to Court of Address on Conservatorships/Guardianship (LASC form PRO 003) must be submitted with the petition for appointment of guardian (or successor guardian), and at the time letters of guardianship are presented for issuance.

(c) Appointment of Non-Relative Guardian. When the petition requests the appointment of a non-relative as guardian of the person, a notice of hearing with a copy of the petition must be mailed at least 15 days prior to the hearing date to:

Department of Children and Family Services
201 Centre Plaza Drive
Monterey Park, CA 91754

California Department of Social Services
744 P Street
Sacramento, CA 95814-6413

(Rule 4.80 new and effective July 1, 2011)

4.81 GUARDIANSHIP ACCOUNT OR WAIVER OF ACCOUNT

(a) Separate Accounting for Each Minor. When a guardian is appointed for more than one minor, the guardian must file a separate accounting for each minor.

(b) Waiver of Accounting When a Ward Reaches Majority. When a former ward who has reached the age of majority waives the guardian's final accounting, the court should not, but retains the discretion to, approve the waiver, unless the former ward is present at the hearing.

(Rule 4.81 new and effective July 1, 2011)

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- 4.82 **RESERVED**
- 4.83 **RESERVED**
- 4.84 **RESERVED**
- 4.85 **RESERVED**

CONSERVATORSHIP PROCEEDINGS

4.86 APPOINTMENT OF CONSERVATORS

(a) Form Filed with Petition. A Notification to Court of Address on Conservatorships/Guardianship and its Addendum (LASC form PRO 003) must be submitted with the petition for appointment of conservator (or successor conservator), and at the time letters of conservatorship are presented for issuance.

(b) Appointment of Private Professional Conservator. When appointment of a private professional conservator is sought, the petition must include the fiduciary's California Fiduciary Bureau's license number and a statement verifying his or her active status.

(Rule 4.86 new and effective July 1, 2011)

4.87 LANTERMAN-PETRIS-SHORT ("LPS") CONSERVATORSHIP

(a) LPS Conservatorship Proceeding. If the conservatee or proposed conservatee is currently under an LPS conservatorship, the petition must state the county where the LPS proceeding is pending, the case number, and the name and address of the LPS conservator.

(b) Notice to LPS Conservator. Notice must be given to the LPS conservator in the same manner as required for relatives within the second degree.

(Rule 4.87 new and effective July 1, 2011)

4.88 NOTICE OF ESTABLISHMENT OF CONSERVATORSHIP

The conservator of the estate must record a certified copy of letters of conservatorship with the county recorder in each county where the estate's real property is located, unless (a) the conservator in a limited conservatorship does not have the power to contract, or (b) the rights of the conservatee have been broadened pursuant to Probate Code section 1873 to include the power to enter into real property transactions without prior order.

(Rule 4.88 new and effective July 1, 2011)

4.89 CONSERVATORSHIP CARE PLAN

(a) Care Plan Form. A "Conservatorship Care Plan" form (LASC form PRO 023) must be used when a conservator files a personal care plan required by Probate Code section 2352.

(b) Notice to Court Investigator. When a Conservatorship Care Plan is filed a copy must be mailed to the Court Investigator's Office, 111 N. Hill Street, Room 250, Los Angeles, CA 90012.

(Rule 4.89 new and effective July 1, 2011)

4.90 COURT INVESTIGATOR'S ASSESSMENT

The conservator's account and/or report must state whether all court investigator's assessments have been paid. No final discharge will be granted until proof of payment is filed or payment of the assessments have been waived.

(Rule 4.90 new and effective July 1, 2011)

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4.91 RESIGNATION OF CONSERVATOR

(a) Effective Date of Resignation. A conservator may resign at any time. The resignation will not be effective until a successor conservator is appointed and the resignation is approved by the court.

(b) Final Account of Resigning Conservator. A final account of a resigning conservator will not be approved unless the successor conservator was served with a notice of hearing and copy of the proposed final account and/or petition for its approval.

(Rule 4.91 new and effective July 1, 2011)

4.92 NOTICE RE FINAL ACCOUNT UPON DEATH OF CONSERVATEE

Upon the death of the conservatee, a notice of hearing and a copy of the petition for settlement of a final account must be given to the personal representative, if any, of the deceased conservatee, and if none, to all known heirs at law, devisees, and other successors-in-interest.

(Rule 4.92 new and effective July 1, 2011)

4.93 **RESERVED**

4.94 **RESERVED**

4.95 **RESERVED**

4.96 **RESERVED**

4.97 **RESERVED**

**RULES COMMON TO CONSERVATORSHIP PROCEEDINGS,
GUARDIANSHIPS PROCEEDINGS, AND/OR TRUSTS CREATED OR FUNDED
BY COURT ORDER**

4.98 CONSERVATOR'S OR GUARDIAN'S INDEPENDENT POWERS

A request for independent powers under Probate Code section 2591 must justify the necessity for each power requested.

Where the power to sell real property is granted, the sale must be presented to the court for confirmation.

(Rule 4.98 new and effective July 1, 2011)

4.99 INVENTORY AND APPRAISAL OF BENEFITS

If the ward or conservatee receives pension, veterans, social security, welfare, or other periodic benefits, such benefits must be included in the inventory.

(Rule 4.99 new and effective July 1, 2011)

4.100 ACCOUNTS, REPORTS AND CONSERVATOR/GUARDIAN COMPENSATION

(a) Reconciliation of Financial Statements. Where a closing balance reported in the "Property on Hand" schedule (at end of the accounting period) and/or an Inventory and Appraisal (for first accountings) does not agree with the balance reported in its corresponding financial statement, the account must include a schedule with a detailed reconciliation.

(b) Sufficiency of Bond. The petition for approval of an account must state the amount of the current bond, if any, and whether an additional bond or reduction of bond is necessary.

(c) Blocked Account. The petition for approval of an account must identify any funds on deposit in a blocked account. Proof of deposit and the blocked account status must be filed.

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(d) Insured Account. No account balance may be larger than the amount insured.

(e) Vesting of Account. Financial institution accounts must be vested in the name of the fiduciary (e.g., Joe Smith as conservator of the estate of Margaret Smith).

(f) Court Investigator's Assessment. A petition for approval of an account must state the amount of court investigator's assessments that have been paid and any amount due and owing. A receipt for payment must be filed, unless the conservator has obtained an order deferring or waiving payment of the assessment.

(g) Coordination of Hearings. Where a conservatee/ward is the settlor or a beneficiary of a trust that is subject to the court's continuing jurisdiction and the conservator/guardian is the trustee or co-trustee of the trust, the trustee's accounting must be set for hearing on the same day as the conservatorship/guardianship accounting.

(Rule 4.100 new and effective July 1, 2011)

4.101 ACCOUNTS AND INVENTORIES AND APPRAISALS - CONSERVATORS AND TRUSTEES OF TRUSTS SUBJECT TO THE COURT'S CONTINUING JURISDICTION

(a) Copies for the Court Investigator's Office. Conservators of the estate must mail, or cause to be mailed, copies of all accountings and Inventories and Appraisals to the Court Investigator's Office, 111 N. Hill Street, Room 250, Los Angeles, CA 90012. When a conservatee is a beneficiary of a trust subject to the court's continuing jurisdiction or supervision, the trustee must mail, or cause to be mailed, copies of the trust's accounting to the Court Investigator's Office.

(b) Lodging Original Financial Statements. All original financial account statements submitted by private professional fiduciaries in support of their account as required by Probate Code section 2620 must be lodged separately from the accounting with LASC form PRO 021. To facilitate return of the original documents, the fiduciary must submit a self-addressed, postage pre-paid, envelope, or else written instructions or authorization for pick-up by the fiduciary or his or her designee.

(Rule 4.101 new and effective July 1, 2011)

4.102 **RESERVED**

4.103 **RESERVED**

4.104 **RESERVED**

4.105 **RESERVED**

TRUST PROCEEDINGS

4.106 MULTIPLE PROBATE CODE SECTION 17200 *ET SEQ.* PETITIONS CONCERNING ONE TRUST

All petitions filed under Probate Code section 17200 *et seq.* which relate to the same trust must be filed under the same case number.

Each petition filed under Probate Code section 17200 *et seq.*, whether or not filed in the same case file, must contain facts necessary to support the probate jurisdiction of the court and requires a new initial filing fee for each petition.

(Rule 4.106 new and effective July 1, 2011)

4.107 PETITION TO CONFIRM SALE OF TRUST REAL PROPERTY

When a trustee seeks court approval of a sale of trust real property, the sale must comply with the provisions of Probate Code section 10300 *et seq.* The trustee is required to publish a notice of

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intention to sell real property unless the trust gives the trustee the power to sell real property; the trust directs the property to be sold, or the value of the property does not exceed \$5,000 (Prob. Code, § 10301).

(Rule 4.107 new and effective July 1, 2011)

4.108 SETTLEMENT INVOLVING CHARITABLE TRUSTS

The Attorney General must be a party to a petition to modify or terminate a trust for charitable purposes.

(Rule 4.108 new and effective July 1, 2011)

4.109 TESTAMENTARY TRUSTEE ACCOUNT

The starting balance of the first account of a testamentary trustee must conform to the trustee's receipt(s) on file in the decedent's estate proceeding.

(Rule 4.109 new and effective July 1, 2011)

4.110 **RESERVED**

4.111 **RESERVED**

4.112 **RESERVED**

4.113 **RESERVED**

4.114 **RESERVED**

**MINOR'S COMPROMISE, COMPROMISE BY PERSON WITH DISABILITY,
AND TRUST FUNDED OR ESTABLISHED PURSUANT TO COURT ORDER**

4.115 SETTLEMENTS OF CLAIMS OF MINORS OR PERSONS WITH DISABILITIES
(INCLUDING ESTABLISHMENT AND FUNDING OF TRUSTS)

Where there is a judgment or settlement of claim(s), including a covenant not to sue, for a minor or person with a disability, as defined by Probate Code section 3603, the following procedures apply. (*See also* Code Civ. Proc., § 372; Prob. Code, § 2500 *et seq.*; Prob. Code, § 3500, Prob. Code, §§ 3600 - 3612; Standards of Judicial Administration, Section 7.10; and Cal. Rules of Court, rule 3.1384 and rule 7.950 *et seq.*)

(a) Proper Court to Approve Settlement.

(1) No Civil Action Pending. If no civil action is pending, the settlement must be approved by the probate court as provided in Probate Code sections 2505(b) and 3500.

(2) Pending Civil Action. If a settlement for a minor or a person with a disability is reached in a pending civil action, the settlement must be approved in the court in which the action is pending (Prob. Code, § 2505(a)).

(b) Disposition of Proceeds. Proceeds from a settlement or judgment may be handled in the following manner (except for settlements made pursuant to Probate Code section 3500(d)):

(1) Distribution to a parent of a minor. (Prob. Code, § 3611(e) and 3400 *et seq.*);

(2) Distribution to one or more insured blocked accounts deposited in financial institutions in California. (Prob. Code, § 3602(c)(1).) Deposits in financial institutions covered by FDIC insurance must not exceed the amount covered;

(3) Distribution to a guardian or conservator of the estate after filing of appropriate bond. (Prob. Code, § 3602(b) and 3611(a).);

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(4) Distribution to a custodian under the Uniform Transfers to Minors Act. The custodian may be required to place the funds into a blocked account or be bonded in the amount required by Probate Code section 2320 *et seq.* (Prob. Code, §§ 3602(c) and 3611(f).);

(5) Purchase of a single-premium deferred annuity. (Prob. Code, §§ 3602(d) and 3611(b).);

(6) Creation and distribution to a special needs trust. (Prob. Code, §§ 3602(d) and 3611(c).); and

(7) Creation and distribution to a trust for a minor that is revocable at age 18. (Prob. Code, §§ 3602(c)(3) and 3611(g).)

(c) Special Needs Trusts. When the settlement proposes the establishment of a special needs or other trust as provided in Probate Code sections 3600 to 3612, the terms of the proposed trust must be reviewed by the Probate Department. The terms of the trust must include the provisions required in California Rules of Court, rule 7.903, and Local Rule 4.116.

(d) Orders.

(1) Order Approving Compromise. The order must be on Judicial Council form “Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person with a Disability.”

(2) Order Establishing Trust. When the order establishes a trust, the order must set forth the provisions of the trust in their entirety.

(e) Post-Judgment Procedure.

(1) Commencement of Trust Proceeding. An order approving a settlement must provide that the trustee(s) commence a separate trust proceeding with a probate case number in the County. A certified copy of the settlement order establishing the trust and a copy of the trustee’s bond(s) must be filed with the court as an attachment to a pleading which will create a new probate case. The accounting will be tracked by the court in the new probate case.

(2) Blocked Account: A certified or file endorsed copy of the Judicial Council form “Order To Deposit Money Into Blocked Account” must be delivered to the financial institution. The Judicial Council form “Receipt and Acknowledgment of Order for the Deposit of Money to Blocked Account” must be signed by the depository and promptly filed with the court pursuant to California Rules of Court, rule 7.953. Counsel must ensure that funds are deposited in accordance with the order. Attorney’s fees must not be paid until a receipt reflecting the deposit is filed with the court.

(3) Withdrawal of Funds from Blocked Account: In order to withdraw funds from a blocked account, Judicial Council form “Petition for Withdrawal of Funds from Blocked Account” must be filed in the probate court. Petitions may be presented *ex parte*. In Central District cases, contact Minor’s Account Section, Stanley Mosk Courthouse.

When withdrawal is sought because the minor has reached majority and the “Order To Deposit Money Into Blocked Account” is self-executing, *i.e.*, provides for release when minor attains the age of 18, no petition is necessary and the former minor must contact the financial institution directly for release of funds.

(Rule 4.115 [7/1/2011, 7/1/2014] amended and effective January 1, 2017)

4.116 TRUST CREATED OR FUNDED PURSUANT TO COURT ORDER

(a) Trusts Created or Funded by Court Order. Trusts created or funded by court order, including trusts created pursuant to Probate Code sections 2580 *et seq.* (“substituted judgment”), 3100 *et seq.* (relating to particular transactions for disabled spouses or registered domestic partners), and 3600 *et seq.* (relating to the compromises of claims of minors and persons with disabilities) are

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governed by California Rules of Court, rule 7.903. All such trusts must include provisions for protection of the trust assets against misuse and continuing supervision by the court. Except as provided in subdivision (c) herein, or unless the court otherwise orders for good cause shown, trusts created or funded by court order must:

- (1) not contain a no-contest provision;
- (2) prohibit modification or revocation without court approval;
- (3) clearly identify the trustee and any other person(s) with authority to direct the trustee to make disbursements;
- (4) prohibit investments by the trustee other than those permitted under Probate Code section 2574;
- (5) require persons identified in subdivision (3) to post bond in the amount required under Probate Code section 2320 *et seq.*;
- (6) require the trustee to file accounts and reports for court approval in the manner as frequency required by Probate Code sections 1060 *et seq.* and 2320 *et seq.*;
- (7) require court approval of changes in trustees and a court order appointing any successor trustee; and
- (8) require that compensation of the trustee, the members of any advisory committee, and the attorney for the trustee be in reasonable amounts as fixed by court order. The trust may provide for periodic payments of compensation, subject to the requirements of Probate Code section 2643 and California Rules of Court, rule 7.755.

(b) Additional Trust Requirements. The court may also require that the trust include the following provisions:

(1) Where the trustee is a trust company (as defined in Financial Code section 107) and it petitions for fees, the petition must include a complete disclosure of any fees paid to a fiduciary and/or any affiliate as required by Probate Code section 16015 and Financial Code section 1561.1;

(2) Any purchase of a personal residence for a beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships. (*See Prob. Code, § 2571.*);

(3) Any sale of a personal residence of the beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships. (Prob. Code, § 2540(b).) Such sales must be returned to court for confirmation. (*See Prob. Code, § 10300 et seq.*); and

(4) The trustee may not borrow money, lend money, give security, lease, convey, or exchange any property of the estate without prior authorization of the court. (Prob Code, § 2550.)

(c) Rule Does Not Apply to Trusts Under \$20,000. Unless the court otherwise orders for good cause shown, this rule does not apply to trust instruments or trusts that have a total asset value of \$20,000 or less.

(Rule 4.116 new and effective July 1, 2011)

4.117 SPECIAL NEEDS TRUST CREATED BY COURT ORDER/JUDGMENT

A special needs trust is intended to allow the beneficiary to continue to maintain eligibility for certain needs-based government benefits, such as SSI or Medi-Cal. The trust contains limitations on the ability to use trust assets to pay for the beneficiary's food, shelter, clothing and utilities, so that this eligibility for government benefits will not be impaired. (*See 20 C.F.R. § 416.1130 et seq.*, and 22 Cal. Code Regs., § 50509 *et seq.*)

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Where special needs trusts are established by court order, federal law generally requires that the trust provide that upon termination of the trust Medi-Cal or any other Medicaid agency which has paid benefits to the beneficiary shall receive all amounts remaining in the trust up to an amount equal to the benefits paid (42 U.S.C. § 1396p(d)(4)(A)). The Department of Health Services promulgates general guidelines regarding special needs trusts, and the guidelines can be obtained by contacting that agency.

(Rule 4.117 new and effective July 1, 2011)

4.118 COURT PROCEEDING FOR TRUST ESTABLISHED UNDER PROBATE CODE SECTION 2580 OR 3100

When a trust is created under Probate Code section 2580 *et seq.* in a conservatorship proceeding, or pursuant to Probate Code section 3100 *et seq.*, all future proceedings relating to that trust must be filed as a new separate case.

(Rule 4.118 new and effective July 1, 2011)

4.119 **RESERVED**

4.120 **RESERVED**

4.121 **RESERVED**

4.122 **RESERVED**

PROBATE VOLUNTEER PANEL ATTORNEYS

4.123 PROBATE VOLUNTEER PANEL GENERAL ELIGIBILITY REQUIREMENTS AND PROCEDURE FOR APPOINTMENT TO THE PANEL

All Probate Volunteer Panel (“PVP”) Attorneys must meet the following general requirements:

(a) Active Status with the State Bar. The attorney must have maintained active status with the State Bar of California for each of the preceding three years and have no disciplinary proceedings pending or filed against him or her during the preceding twelve months.

(b) Submit Application and Compliance Statement. The attorney must complete and submit the following:

- (1) An Application for Appointment to the Probate Volunteer Panel;
- (2) A Compliance Statement with the Application, and annually thereafter;

These forms may be obtained on-line at www.lasuperiorcourt.org, see “Probate,” from the Probate Division, Stanley Mosk Courthouse, or by calling telephone number (213) 974-5471; and

(3) If seeking appointment in Conservatorship and/or Guardianship proceedings, Judicial Council form GC-010, Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorship/Guardianships. Annually thereafter, the attorney must submit Judicial Council form GC-011, Annual Certification of Court Appointed Attorney. These forms may be obtained by calling telephone number (213) 974-5501 or on-line at www.courts.ca.gov/forms.

(c) Educational and MCLE Requirements.

(1) The attorney must complete at least twelve hours of MCLE during his/her State Bar reporting period in the subjects of decedent estates, conservatorships/guardianships, or trust administration;

(2) The attorney must complete the mandatory PVP training course(s) within one year from submission of his or her application; and

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(3) To qualify for appointment in conservatorship or guardianship proceedings, the attorney must satisfy the qualifications and continuing education requirements in California Rules of Court, rule 7.1101.

(d) Professional Liability Insurance. The attorney must carry professional liability insurance with policy limits consistent with the value of the matters handled, and at a minimum an amount of \$100,000 per claim and \$300,000 per year.

(Rule 4.123 new and effective July 1, 2011)

4.124 PROBATE VOLUNTEER PANEL - REQUIREMENTS FOR SPECIFIC AREAS OF INTEREST

(a) General Requirements for Specific Areas of Interest. PVP Attorneys must meet the following general requirements for specific area(s) of interest:

(1) Decedent Estate and Trust Administration. Prior to filing the application and within the past three years, the attorney must have represented parties in at least six different probate or trust administration court proceedings, including three decedent estate or trust proceedings from inception through final account and/or order for distribution.

The attorney must have experience and/or training in tax-related issues sufficient to enable him or her to identify tax issues from the facts of the case and to competently represent the client's interests concerning the potential tax consequences of the particular matter.

(2) Conservatorships. Attorneys representing conservatees in Conservatorship proceedings must satisfy the requirements of California Rules of Court Title Seven, rule 7.1101(b)(2).

(3) Guardianships. Attorneys representing conservatees in Guardianship proceedings must satisfy the requirements of California Rules of Court Title Seven, rule 7.1101(b)(1).

(4) Conservatorships of the Person. Prior to filing the application and within the past five years, the attorney must have represented parties in at least four conservatorship of the person matters (including at least two proceedings from their inception) which involve securing the appointment and qualification of the conservator of the person.

(5) Limited Conservatorships. Attorneys representing limited conservatees in Conservatorship proceedings must satisfy the requirements of California Rules of Court Title Seven, rule 7.1101(b)(2). In addition, the attorney must understand the legal and medical issues arising out of developmental disabilities and the role of the Regional Center.

(6) Estate Planning and Taxation. Prior to filing the application and within the past three years, the attorney must have extensive experience in matters regarding estate planning, estate, gift, or income tax or related tax matters pertaining to trusts and decedent estates. The attorney must have represented parties in at least three substituted judgment (Prob. Code, § 2580 *et seq.*) or particular transactions matters. (Prob. Code, § 3100 *et seq.*)

(7) Medi-Cal Planning. Prior to filing the application and within the past three years, the attorney must have represented parties in at least three Probate Code section 3100 petitions, including at least two in which there was a request to increase either the Community/Spouse Resource Allowance and/or increase the Minimum Monthly Maintenance Need Allowance. The attorney must be familiar with the laws and regulations for Medi-Cal eligibility, and shall be knowledgeable on the rules regarding the increase of the CSRA/MMMNA, exempt assets, gifting rules, and tax ramifications related to Medi-Cal planning.

(8) Compromises/Judgments and Special Needs Trusts for Minors/Persons with Disabilities. Prior to filing the application and within the past three years, the attorney must have represented parties in at least three petitions for approval of compromise under Probate Code section

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3500 or Code of Civil Procedure section 372, three of which involved creation of special needs trusts. The attorney must be familiar with the advantages and disadvantages of the various funding alternatives available under Probate Code section 3600 *et seq.*, and the application of MICRA to medical malpractice settlements.

(9) Fiduciary Appointments/Guardians *ad Litem*. The attorney must have at least ten years in practice, with recent experience serving as a fiduciary or guardian *ad litem*.

An attorney who acts as a guardian *ad litem* or fiduciary may not be covered by his or her professional liability insurance. Although insurance coverage is not a requirement, the attorney may wish to consult his or her professional liability insurance carrier prior to accepting such appointment.

(10) Evidence Code Section 730 Experts/Referees/Special Masters. The attorney must have at least ten years in practice, with experience serving as an Evidence Code section 730 expert, Code of Civil Procedure section 638 referee, or special master. The attorney also must have substantial expertise in the substantive area of law involved in the matter.

(11) Health Care Decisions for Adults Without Conservators and Tuberculosis Detention Proceedings/Capacity Determinations. Prior to filing the application and within the past three years, the attorney must have extensive experience in matters relating to medical treatment and bio-ethical issues. The attorney must be familiar with Probate Code section 3200 or Health and Safety Code section 121365 proceedings. These cases often involve complex treatment issues and may require immediate attorney response to medical emergencies. Consequently, the attorney must become familiar with the medical parameters underlying these issues in order to adequately represent the client's interests.

(b) MCLE Requirements for Specific Areas of Interest. PVP Attorneys must meet the following MCLE requirements for specific area(s) of interest:

(1) Conservators. The attorney must satisfy the educational requirements found in California Rules of Court Title Seven, rule 7.1101(f)(1).

(2) Guardians of the Estate. The attorney must satisfy the educational requirements found in California Rules of Court Title Seven, rule 7.1101(f)(1).

(3) Guardians of the Person. The attorney must satisfy the educational requirements found in California Rules of Court Title Seven, rule 7.1101(f)(2).

(4) Estate Planning and Taxation. The attorney must have at least ten hours of MCLE in the areas of estate planning and taxation during the attorney's State Bar reporting period.

(5) Limited Conservatorships/Conservatorships for Developmentally Disabled Adults. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the attorney's State Bar reporting period, and have attended the Limited Conservatorships PVP Training Program.

(6) Medi-Cal Planning. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the attorney's State Bar reporting period.

(7) Compromises/Judgments and Special Needs Trust for Minors/Incompetent Adults. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the attorney's State Bar reporting period.

(8) Health Care Decisions for Adults Without Conservators and Tuberculosis Detention Proceedings/Capacity Determinations. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships during the attorney's State Bar reporting period.

(Rule 4.124 new and effective July 1, 2011)

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4.125 ETHICAL GUIDELINES

PVP counsel's primary duty is to represent the interests of his or her client in accordance with applicable laws and ethical standards. The PVP attorney's secondary duty is to assist the court in the resolution of the matter to be decided. The PVP attorney must, if practical, ensure that the client is afforded an opportunity to address the court directly.

(Rule 4.125 new and effective July 1, 2011)

4.126 PVP ATTORNEY APPOINTMENTS ARE PERSONAL

PVP Attorney appointments are personal and cannot be delegated to other attorneys. Only the PVP attorney appointed by the court may render legal services to the client and appear at hearings.

(Rule 4.126 new and effective July 1, 2011)

4.127 WRITTEN REPORT AND COMPENSATION FOR PVP ATTORNEYS

(a) Written Report. PVP attorneys appointed by the court must file a written report with a verified statement that:

(1) The PVP attorney is an active member of the State Bar of California and no disciplinary actions are pending and none were filed against him or her during the past twelve months;

(2) The PVP attorney has professional liability insurance coverage in effect with policy limits consistent with the value of the matter being handled; and

(3) The PVP attorney has not represented any party to the proceeding except as stated in the report. The statement must include the name of the party represented and a brief explanation of the representation. Cases where a PVP attorney has represented a private professional conservator in the proceeding must be included.

(b) Compensation for PVP Attorneys. A PVP attorney's request for compensation may be made as part of the written report filed with the court or otherwise orally at the hearing.

(1) A request for compensation for services in excess of five hours must be supported by a written fee declaration and served upon the appearing parties. The declaration must include a listing of services rendered by date, the service rendered, and the time devoted to that service.

(2) The PVP attorney will be awarded compensation at an hourly rate below market rates except in cases involving unusual problems requiring extraordinary expertise, or where the value of the estate warrants otherwise.

(3) If the person represented by the PVP attorney is unable to pay, the court may order the fees to be paid by the estate, a party, or the County where authorized by statute. A form requesting County-paid compensation may be obtained from the clerk.

(4) If the PVP attorney does not appear in court as part of his or her representation, he or she must file and set for hearing a petition for compensation.

(Rule 4.127 new and effective July 1, 2011)

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- 4.128 **RESERVED**
- 4.129 **RESERVED**
- 4.130 **RESERVED**

MENTAL HEALTH MATTERS

4.131 JUDICIAL COMMITMENT

(a) Requirements. A petition for commitment must generally allege the statutory basis for commitment. Every petition must include a sworn affidavit or declaration signed under penalty of perjury and documentary evidence in support of the commitment. Petitioner must give notice to respondent personally and to the Public Defender's Office. A petition for an extended commitment must be timely filed. A petition must have a proof of service attached.

(b) Counsel's Duty to Advise Respondent of Rights. Counsel for respondent must advise respondent of the right to appear at all proceedings, including the hearing on the petition for commitment. Counsel for respondent must also advise respondent of the right to a jury trial or a trial by the court, the right to confront and cross-examine adverse witnesses, to present evidence on respondent's behalf using the free subpoena power of the court, and the privilege against self-incrimination. Counsel must advise respondent that if a commitment is granted, the People may subsequently seek renewed commitments.

(c) Waiver. Counsel must advise respondent of the consequences of waiving these rights. The court may accept a written waiver of each of these rights if the waiver is signed by respondent and notarized or witnessed by counsel. The waiver must specify that respondent understands that he or she faces the possibility of renewed commitments which could last for his or her lifetime.

(Rule 4.131 [as Rule 8.50 7/1/2011])

Moved to Probate Chapter and effective May 17, 2013)

4.132 MEDICATION CAPACITY/RIESE HEARINGS (FACILITY-BASED)

(a) Hearing Request Procedure. Medication Capacity Hearings pursuant to Welfare & Institutions Code section 5332 are facility-based hearings which may be requested by filing a "Petition and Declaration of Service Regarding Capacity to Give Informed Consent to Medication." A petition may be filed by facsimile at (323) 223-3538. The petition must indicate the availability of the treating physician and, if an interpreter is necessary for the patient, the language required. The person filing the petition must telephone the court's hearing coordinator at (323) 226-2911 to ensure that the court has received the request for the medication capacity hearing.

(b) Notice. The treating facility representative who filed the petition must personally inform the patient in writing of the time and place of the hearing on the same day that the court receives notice in compliance with Welfare and Institutions Code section 5334(a).

(c) Patients' Rights Advocate Access To Patient's Record. A patient's rights advocate will be provided in accordance with Welfare and Institutions Code section 5333(d). Facilities must allow patient's rights advocates unabridged access to the patient, the patient's record, and any other information needed in preparation for the hearing.

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(d) Hearing Coordinator. The court's hearing coordinator will determine the schedule of medication capacity hearings and must notify the facility's patients' rights office and the appropriate hearing office of the next day's schedule of hearings. The hearing coordinator must also notify the advocate of any patient transfers, discharges, or changes of status which would affect the hearing. The court's hearing coordinator must notify all involved facility liaison persons of the time of the hearing(s) scheduled for the next court day. The court's hearing coordinator must arrange to provide an interpreter at the hearing if one is indicated.

(e) The Hearing. The facility must ensure that the patient is present at the appointed time of the hearing unless the patient has waived his or her presence. The hearing will be closed to all but necessary participants except for persons expressly invited by the patient, and permitted to attend in the hearing officer's discretion, and persons permitted to attend by the hearing officer for safety reasons or training purposes.

(1) Presentation of Evidence. The current treating physician must be the person presenting evidence that the patient lacks the capacity to refuse prescribed medication. The physician must be a member of the facility staff designated by the facility director and must have personally discussed the prescribed treatment with the patient.

(2) Standard. The hearing officer will apply the clear and convincing evidence standard to determine the patient's capacity to consent to medication.

(3) Decision. At the conclusion of the hearing, the decision shall be announced orally followed by a written decision given to the patient, advocate and facility director to be placed in the patient's chart by the facility director or his or her designee.

(f) Appeal. The facility or the patient may request judicial review following an adverse determination. A patient may request judicial review by notifying a member of the facility staff, the mental health courts, or the patients' rights office. A patient requesting a judicial review will be represented by the Public Defender's Office or privately retained counsel. A private facility requesting judicial review must be represented by a privately retained attorney. A public facility will be represented by a county counsel or district attorney. On a patient's petition, the treating physician may appear with counsel. The mental health court will conduct the review hearing within two court days after a petition is filed. A petition is deemed filed when it is sent by facsimile to the mental health court at (323) 223-3538 and petitioner has also telephoned to the court's hearing coordinator at (323) 226-2911 to verify receipt of the petition.

(g) Holding periods. Each additional holding period necessitates a new medication capacity hearing if the patient continues to refuse medication, unless the hearing was conducted during the initial 72-hour evaluation period, in which case, the finding of the hearing officer continues through the expiration of the 14-day hold. If a refusing patient is placed on Temporary Conservatorship under Welfare and Institutions Code section 5352.1, the treating facility may request a judicial hearing by contacting County Counsel's Office.

(Rule 4.132 [as Rule 8.51 7/1/2011]
Moved to Probate Chapter and effective May 17, 2013)

4.133 ELECTROCONVULSIVE THERAPY HEARINGS FOR INVOLUNTARILY HELD PATIENTS

The patient's attending physician through counsel may petition the court for an evidentiary hearing to determine the capacity of a patient who is involuntarily hospitalized to consent to or refuse electroconvulsive therapy ("ECT").

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(a) Contents. The petition must contain a declaration by the treating physician in accordance with Welfare and Institutions Code section 5326.7. The declaration must state that two psychologists or neurologists have consulted and have approved the proposed treatment. The declaration must also specify which physician was appointed by the County Mental Health Director and which physician was designated by the treating facility/hospital.

(b) Notice. At least 48 hours before filing the ECT Petition, petitioner must serve the petition upon the Public Defender or other attorney representing the patient. The petition and accompanying documents may be served by facsimile.

(c) Proof of Service. The proof of service of the petition must be filed with the clerk of the court at the time the petition is filed.

(d) Hearing Date and Time. The clerk's office of the court will set a date and time for hearing and will notify all the parties listed in the proof of service.

(e) Hearing. The patient and adult responsible relative, if the patient has designated one, must be present at the ECT hearing. Petitioner must bring all medical records to court and permit inspection and copying prior to the hearing. The County Counsel's Office will provide representation at an ECT Hearing for a county hospital through the Department of Health Services. If the treating facility is a private hospital, the attending physician must appear with the legal counsel provided by the hospital.

(Rule 4.133 [as Rule 8.52 7/1/2011])

Moved to Probate Chapter and effective May 17, 2013)

4.134 PETITION FOR RESTORATION OF RIGHT TO POSSESS A FIREARM

(a) Petition. A petition for restoration of the right to own, possess, control, receive, or purchase a firearm pursuant to Welfare and Institutions Code section 8103(f)(1), and any supporting documentation must be filed with the clerk's office of the mental health court. The petition must include a discharge summary prepared by the last inpatient facility which provided involuntary treatment. In addition, if a firearm has been confiscated and the petition seeks to regain the firearm, a detailed description of the firearm, the name of the agency which removed the firearm, and a copy of the receipt given by the agency upon removal must be attached to the petition. At the hearing, the court may also require written verification from a treating therapist stating that the petitioner will be able to use the firearm in a safe manner.

(b) The Hearing. The clerk will send a notice of the hearing date to petitioner. The petitioner must attend the hearing, and may represent him or her self, or be represented by privately retained counsel. If the court decides in petitioner's favor, petitioner must prepare an order restoring the petitioner's right to possess a firearm for the court's signature. If the petitioner regains the right to buy or possess firearms, the court will send notice to the Department of Justice.

(c) Return of Firearm in Court or Law Enforcement Custody. Penal Code section 12021.3(b) prohibits return of a firearm in court or law enforcement custody to anyone unless the California Department of Justice has determined that the person is legally eligible to possess a firearm. If the firearm is in the custody of the court, the court will not order a firearm returned until the provisions of that section are complied with, and petitioner has obtained a written notification from the California Department of Justice that the petitioner is eligible to possess a firearm. If the firearm is in law enforcement custody, the court will not order it returned and petitioner must present the written notification from the Department of Justice directly to the law enforcement agency.

(Rule 4.134 [as Rule 8.53 7/1/2011])

Moved to Probate Chapter and effective May 17, 2013)

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4.135 *EX PARTE* REQUESTS

An *ex parte* filing made in the mental health courts under the Welfare and Institutions Code must comply with California Rules of Court, rule 3.1200 *et seq.* Additionally, the moving party must provide notice regarding the *ex parte* request to the institution, if any, in which the person is confined, and opposing counsel, and file a proof of service listing the names of all persons notified.

(Rule 4.135 [as Rule 8.54 7/1/2011])

Moved to Probate Chapter and effective May 17, 2013)

4.136 BRIEF PRELIMINARY EVALUATIONS OF THE MENTAL COMPETENCY OF A CRIMINAL DEFENDANT

(a) Brief Preliminary Evaluation Reports. A brief preliminary evaluation of the mental competency of a criminal defendant may be conducted by a forensic psychiatrist working in the Mental Health Courthouse on a *per diem* (or half-day) basis. The evaluation shall be memorialized in a written report, which shall be submitted to the mental health court in which the defendant's competency case is pending. The report shall specify the defendant's name, the date of the evaluation, and the case number or numbers. The report shall also specify the reasons for the psychiatrist's opinion as to the defendant's competence, including observed symptoms, and the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder. If the psychiatrist opines that the defendant is not competent to stand trial, the report shall address the issues regarding antipsychotic medication as specified in Penal Code section 1369(a). The report shall be signed by the psychiatrist.

(b) Application. This local rule is intended to comply with Rule 4.130(a)(3) of the California Rules of Court, so that Brief Preliminary Evaluation Reports prepared in accordance with this rule need not comply with Rule 4.130(d)(2).

(Rule 4.136 new and effective January 1, 2018)

4.137 **RESERVED**

4.138 **RESERVED**

4.139 **RESERVED**