

**Superior Court of California
County of Solano**

Rule 7 – Probate

PART ONE: Probate Proceedings Other Than Trusts

NOTICE:

All rules concerning conservatorships and guardianships have been moved from Rule 7 to Rule 15. Therefore, Rules 7.51 through 7.82, all of which concerned guardianships and conservatorships, are repealed effective July 1, 2009.

7.1 SCOPE OF PROBATE RULES

a. MATTERS TO WHICH RULE 7 APPLIES

Except as otherwise provided in an individual rule, these probate rules apply to all matters governed by the Probate Code.

(Subd (a) adopted effective July 1, 2009.)

b. MATTERS TO WHICH RULE 7 DOES NOT APPLY

Rule 7 does not apply to probate guardianships or probate conservatorships, which are all governed by Rule 15.

(Subd (b) adopted effective July 1, 2009.)

(Rule 7.1 adopted effective July 1, 2009.)

7.2 USE OF JUDICIAL COUNCIL FORMS; FORMAT OF PLEADINGS

a. USE OF JUDICIAL COUNCIL FORMS

Printed forms of petitions, orders and other documents which have been adopted or approved by the Judicial Council shall be used in all cases where applicable.

(Subd (a) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.1 effective July 1, 1988.)

b. FORMAT OF PLEADINGS

Petitions, orders and other documents for which there is no available form approved by the Judicial Council shall conform to the requirements of the California Rules of Court, rules 2.100-2.119.

(Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.1 effective July 1, 1988.)

c. NOTICES OF UNAVAILABILITY OF COUNSEL

The court shall not accept for filing a "Notice of Unavailability of Counsel" or other document or pleading whose sole purpose is to advise the court and/or other

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parties of an attorney's or party's unavailability. *Carl v. Superior Court of Orange County* (2007) 157Cal.App.4th 73.
(*Subd (c) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.1 effective July 1, 1988.*)

(*Rule 7.2 amended and renumbered effective July 1, 2009; adopted as Rule 7.1 effective July 1, 1988; previously amended effective January 1, 2009.*)

7.3 SIGNATURES AND VERIFICATION OF PLEADINGS

Petitions, reports and accounts, as well as objections or responses to petitions, reports and accounts, shall be verified as required by Probate Code section 1020 et seq. The verification shall be included as part of the pleading at the time the pleading is filed. An unverified pleading set for hearing will be placed off-calendar or denied without prejudice.

(*Rule 7.3 amended and renumbered effective July 1, 2009; adopted as Rule 7.2 effective July 1, 1988; previously amended effective July 1, 1989; former Rule 7.3, which concerned titles of pleadings, repealed effective July 1, 2009.*)

7.4 BONDING OF PERSONAL REPRESENTATIVE

a. INCREASES IN BONDS

When a bond must be increased, the court will ordinarily require the filing of an additional bond rather than a substitute bond.

b. DECREASES IN BONDS

When the bond may be decreased, the court will ordinarily require an order decreasing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be filed and set for a noticed hearing. A petition to reduce bond shall not be granted ex parte.

(*Rule 7.4 amended and renumbered effective July 1, 2009; adopted as Rule 7.6 effective July 1, 1988; previously amended effective July 1, 1989; former Rule 7.4, which concerned copies of orders, repealed effective July 1, 2009.*)

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7.5 DECLINATION OF NOMINATED EXECUTOR

If the person petitioning for letters is not the nominated executor in the decedent's will, it is insufficient to allege merely that the nominated executor declines to act as such. The petitioner must either (1) attach to the petition a written declination to act as executor, signed by the nominated executor, or (2) include in the petition sufficient facts demonstrating that the nominated executor should be held to have waived his or her right to appointment per Probate Code section 8001. Any such nominated executor must receive notice of the petition per Probate Code section 8110.

(Rule 7.5 amended and renumbered effective July 1, 2009; adopted as Rule 7.7 effective July 1, 1988; former Rule 7.5, which concerned wills and codicils as amendments to the petition, repealed effective July 1, 2009.)

7.6 NOTICES

Several Probate Code sections require the Clerk of the Court to "cause notice of the hearing to be mailed." The Clerk fulfills this function by requiring a party or a party's counsel to do the mailing. Therefore, the party or the party's counsel is charged with this duty.

(Rule 7.6 amended and renumbered effective July 1, 2009; adopted as Rule 7.10 effective July 1, 1988; previously amended effective July 1, 1989.)

7.7 NOTIFICATION TO COURT OF CONTINUANCES, DROPS OR STIPULATIONS

a. DUTY TO NOTIFY DEPARTMENT

When a probate matter is to be dropped, continued or stipulated to, counsel for the moving party shall promptly notify the department of the court to which the matter is assigned. No matter shall be continued unless the department of the court to which the matter is assigned approves of the continuance date. Any continuance requested within forty-eight (48) hours of the hearing date shall be directed to the department in which the hearing is scheduled for approval.

(Subd (a) adopted effective July 1, 2009.)

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- b. **CONTINUANCE OF HEARING AFTER ANNOUNCEMENT OF PREGRANT ORDER**
No probate matters will be continued after announcement of a pregrant thereon, except by order of the court for good cause.
(Subd (b) adopted effective July 1, 2009.)

(Rule 7.7 adopted effective July 1, 2009.)

7.8 PREGRANTS IN PROBATE MATTERS

- a. **AVAILABILITY OF PREGRANT ORDERS**
On the afternoon of the court day before each calendar, the judges will cause to be recorded telephonically and posted to our web site a pregrant order on each matter on the next day’s calendar. The tentative rulings will be available by telephoning a tape-recorded message at (707) 207-7331 or by signing onto our web site at www.solanocourts.com and clicking “Tentative Rulings” after 2:00 p.m. Thus, for a matter on a Monday calendar, one may call the recorded message or check our web site after 2:00 p.m. on the preceding Friday afternoon, and so forth.
(Subd (a) adopted effective July 1, 2009.)
- b. **PREGRANT ORDER AS THE ORDER OF THE COURT**
The pregrant order shall become the ruling of the court unless a party desiring to be heard so advises the judicial assistant of the department hearing the matter no later than 4:30 p.m. on the court day preceding the hearing, and further advises that such party has notified all interested parties of its intention to appear and argue.
(Subd (b) adopted effective July 1, 2009.)

(Rule 7.8 adopted effective July 1, 2009; former Rule 7.8, which concerned filing fees, repealed effective July 1, 2009.)

7.9 APPEARANCES AT HEARINGS

- a. **HEARINGS WHERE APPEARANCE NOT REQUIRED**
Those matters which by law may be determined upon verification and without testimony shall be submitted for appropriate action by the court without appearance by counsel or witnesses, provided that counsel or the petitioning party accomplish both of the following:

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- (1) All declarations, affidavits, consents, waivers, proposed orders and other necessary papers shall be filed with the Clerk of the Court no later than four full court days prior to the hearing.
- (2) The verified petition or an accompanying affidavit signed by the petitioner or by the personal representative or by counsel of record for either of said persons shall set forth the information necessary to establish the amount of bond, if one is required.

All probate matters shall be non-appearance except as stated in Solano County Local Rules, rule 7.9, subdivision (b), or where an appearance is required by the court.

(Subd (a) amended effective July 1, 2009; adopted effective July 1, 1989; previously amended effective January 1, 2009.)

b. HEARINGS WHERE APPEARANCE IS REQUIRED

Subdivision (a) shall not apply and personal appearance by the parties and/or counsel shall be required in the following cases:

- (1) Contested matters.
- (2) Proof of holographic wills, if the petitioner did not previously submit proof of the admissibility of each testamentary document to probate or if an appearance is specially required by the hearing judge.
- (3) Petitions for court confirmation of sales of property.
- (4) Any non-routine matter which by law requires the personal appearance of any person.

(Subd (b) amended effective July 1, 2009; adopted effective July 1, 1989; previously amended effective January 1, 2009.)

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c. TELEPHONIC APPEARANCE

Telephonic appearance will be permitted when authorized by California Rule of Court, rule 3.670 and Solano County Local Rules, rule 4.14(h), if the party seeking to appear telephonically has also complied with the notice requirements set forth in those rules, and subject to the exceptions set forth in those rules and the court's discretion to require personal appearances.

(Subd (c) amended and relettered effective July 1, 2009; adopted as subd (d) of Rule 7.11 effective July 1, 1989; previously amended effective January 1, 2009.)

(Rule 7.9 amended and renumbered effective July 1, 2009; adopted as Rule 7.11 effective July 1, 1989; previously amended effective January 1, 2009; former Rule 7.9, which concerned calendaring, repealed effective July 1, 2009.)

7.10 EX PARTE APPLICATIONS

a. NOTICE ON EX PARTE PETITIONS

(1) Unless otherwise ordered by the court, a party seeking ex parte relief shall provide notice of the petition to all individuals entitled to notice of a petition by 10:00 a.m. on the court day prior to the ex parte appearance.

(2) All applications for ex parte orders must contain a statement on special notices. The statement shall recite that no request for special notice is on file and in effect or shall list the parties requesting special notice and have attached to the petition the specific waivers of notice by such parties or proof of service on parties requesting special notice.

(Subd (a) adopted effective July 1, 2009; previously adopted as subd (c) of former Rule 7.11 effective July 1, 1989.)

b. WAIVER OF NOTICE

A party seeking to dispense with notice for a particular individual for whom notice has not yet been waived shall file a request to dispense with notice concurrently with the ex parte petition. The request shall set forth sufficient evidentiary facts supporting the request. For individuals who cannot be located, the party shall file a declaration of due diligence in compliance with California Rules of Court, rule 7.52, prior to the ex parte appearance.

(Subd (b) adopted effective July 1, 2009.)

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c. EX PARTE PROCEDURE

- (1) Ex parte hearings are scheduled by each department individually. A party wishing to set an ex parte hearing shall contact the department to which the case is assigned by noon on the court day prior to the desired ex parte appearance. The moving papers and the proposed order shall be faxed to the department as directed by the judicial assistant.

- (2) On the day of the ex parte appearance, the party seeking ex parte relief shall file the original petition or motion seeking ex parte relief with the Clerk of the Court and pay the applicable filing fees. The party shall provide a copy of the receipt showing the payment of fees to the court at the time of the ex parte appearance; otherwise, the hearing shall not take place.

(Subd (c) adopted effective July 1, 2009.)

(Rule 7.10 adopted effective July 1, 2009.)

7.11 APPOINTMENT OF SPECIAL ADMINISTRATOR

Except upon a showing of good cause for dispensing with notice, petitions for special letters of administration will not ordinarily be granted without the petitioning party giving notice in compliance with Probate Code section 8003 and 8110. Applications for special letters of administration may be requested ex parte, provided the application is prepared and submitted in compliance with Solano County Local Rules, rule 7.10, and California Rules of Court, rule 7.55.

(Rule 7.11 amended and renumbered effective July 1, 2009; adopted as Rule 7.14 effective July 1, 1988; previously amended effective July 1, 1989.)

7.12 INFORMATION TO BE CONTAINED IN PETITIONS FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY; FOR LETTERS OF ADMINISTRATION; OR FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED (PROBATE CODE SECTION 8000 ET SEQ.)

a. INFORMATION TO BE INCLUDED WITH THE PETITION

Any petition for probate of a will and for letters testamentary, for letters of administration, or for letters of administration with will annexed shall contain the following information:

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- (1) If the heir is a minor, the heir's date of birth.
- (2) The name of any and all nominated trustees of a trust created by the will.
- (3) The name of any and all trustees and beneficiaries of an inter vivos trust created by the decedent and that is in existence at the time of the decedent's death.
- (4) The name of any and all trustees of a special needs or other trust created to benefit the decedent and that is in existence at the time of the decedent's death.

(Subd (a) adopted effective July 1, 2009.)

b. INFORMATION CONCERNING A DECEASED BENEFICIARY

In addition to the information required in Rule 7.12(a), information concerning a deceased beneficiary shall be included in the petition as follows:

- (1) If an heir or beneficiary dies before the decedent, that person should be listed with the notation that he or she is predeceased, and date of death. No notice need be given to the successors in interest of the predeceased person unless that person's interest has not lapsed by reason of death, in which case, notice should be given in the same manner as for the postdeceased heir or beneficiary.
- (2) If an heir or beneficiary dies after the decedent, that person's name should be listed with the notation "deceased", and date of death. If a personal representative has been appointed, the postdeceased heir or beneficiary should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, that fact should be alleged, and notice given to the last known address of the postdeceased heir or beneficiary.
- (3) If a named beneficiary predeceased the decedent or did not survive the decedent for the designated survival period, that fact must be stated, together with the actual or approximate date of death.

(Subd (b) adopted effective July 1, 2009.)

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(Rule 7.12 amended and renumbered effective July 1, 2009; adopted as Rule 7.15 effective July 1, 1988; former Rule 7.12, which concerned short cause calendars, repealed effective July 1, 2009.)

7.13 PREPARATION OF ORDERS

a. PROPOSED ORDERS SUBMITTED PRIOR TO HEARING

All probate orders in uncontested matters shall be prepared by the petitioner's attorney of record or the petitioner, if unrepresented, and shall be submitted at least four court days prior to the hearing.

(Subd (a) adopted effective July 1, 2009.)

b. MATERIAL TO BE INCLUDED IN PROBATE ORDERS

All orders or decrees in probate matters must be complete in and of themselves, so that their effect may be understood without reference to the underlying petition. The order or decree shall set forth all matters actually passed on by the court, the relief granted, and the names of persons and descriptions of property or amounts of money affected with the same particularity required of judgments in civil matters. The court will not approve orders or decrees that merely recite that the petition as presented is granted or incorporate by reference the relief sought in the petition. However, in orders settling accounts, the court will ordinarily approve general language approving the account, the report, and the acts reflected therein. With the exception of attached schedules, no written matter shall appear after the judicial officer's signature line.

(Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.19 effective July 1, 1988.)

(Rule 7.13 amended and renumbered effective July 1, 2009; adopted as Rule 7.18 effective July 1, 1988; former Rule 7.13, which concerned long cause calendars, repealed effective July 1, 2009.)

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7.14 INTEREST ON FUNERAL AND INTERNMENT CLAIMS

When accrued interest has been paid on delayed payment of claims for the reasonable costs of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit has been taken for such payment, setting forth reasons for any delay in payment. The court will not allow credit for payment of interest when the delay in payment of the claims is not justified by the facts set forth. Interest for funeral and internment claims will be allowed only as provided by Health and Safety Code section 7101.

(Rule 7.14 amended and renumbered effective July 1, 2009; adopted as Rule 7.21 effective July 1, 1988.)

7.15 REAL ESTATE IN INVENTORY AND APPRAISAL

If a decedent's estate contains real property, the inventory and appraisal shall identify that property by its address and shall include a legal description of the property. If the parcel is unimproved, the inventory must so state.

(Rule 7.15 amended and renumbered effective July 1, 2009; adopted as Rule 7.23 effective July 1, 1988; amended effective July 1, 1989.)

7.16 CASH DEPOSIT

A minimum cash deposit of ten percent (10%) of the purchase price (unless the loan proceeds exceed 90% of the purchase price), shall be deposited in escrow ten days prior to the confirmation of sale hearing date, and written verification of said deposit shall be filed with the court five (5) days prior to the confirmation of sale hearing date.

(Rule 7.16 renumbered effective July 1, 2009; adopted as Rule 7.24 effective July 1, 1988; previously amended effective July 1, 1989; former Rule 7.16, which concerned attorney's names, repealed July 1, 2009.)

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7.17 SECOND DEEDS OF TRUST

The court will approve the taking of a promissory note secured by a second deed of trust upon a showing that it serves the best interests of the estate.

(Rule 7.17 renumbered effective July 1, 2009; adopted as Rule 7.25 effective July 1, 1988; former rule 7.17, which concerned proof of wills, repealed effective July 1, 2009.)

7.18 EARNEST MONEY DEPOSIT BY OVERBIDDER

When a sale is confirmed to an overbidder, the overbidder must submit at the time of the hearing a certified or cashier's check in the amount of ten percent (10%) of the bid.

(Rule 7.18 renumbered effective July 1, 2009; adopted as Rule 7.26 effective July 1, 1988.)

7.19 APPEARANCES OF COUNSEL

In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the court will ordinarily not proceed with the confirmation of the sale in the absence of the petitioner's attorney, if the petitioner is represented. Where the personal representative, guardian or conservator is present and requests that the sale proceed, the court may do so, in its discretion.

(Rule 7.19 amended and renumbered effective July 1, 2009; adopted as Rule 7.27 effective July 1, 1988; previously amended effective July 1, 1988.)

7.20 CONDITIONAL SALES OF REAL PROPERTY

The court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail, the court may approve such a sale.

(Rule 7.20 amended and renumbered effective July 1, 2009; adopted as Rule 7.30 effective July 1, 1988; former Rule 7.20, which concerned approval of funeral claims, repealed effective July 1, 2009.)

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7.21 BROKER'S COMMISSIONS

a. IMPROVED REAL PROPERTY

An agent or broker's commission on the sale of improved real property shall not exceed six percent (6%). A copy of an executed broker's agreement shall be attached to the petition for confirmation of sale.

(Subd (a) amended effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

b. UNIMPROVED REAL PROPERTY

An agent or broker's commission on the sale of unimproved or raw real property shall not exceed ten percent (10%). A copy of an executed broker's agreement shall be attached to the petition for confirmation of sale.

(Subd (b) amended effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

c. BROKER COMMISSIONS IN OVERBID SITUATIONS

Broker commissions in overbid situations are governed by Probate Code section 10160 et seq.

(Subd (c) amended effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989.)

(Rule 7.21 amended and renumbered effective July 1, 2009; adopted as Rule 7.31 effective July 1, 1988; previously amended effective July 1, 1989.)

7.22 STATUTORY COMPENSATION FOR PERSONAL REPRESENTATIVE AND ATTORNEY FEES

a. INCLUSION OF COMPUTATION IN PETITION

The computation in Rule 7.22, subsection (b), must be made regardless of the estate's value and even though an accounting has been waived. For estates worth in excess of \$25,000,000.00 (twenty-five million dollars), the court shall determine the reasonable amount of compensation.

(Subd (a) adopted effective July 1, 2009.)

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b. **FORMAT OF REQUEST FOR STATUTORY COMPENSATION AND ATTORNEY FEES**

The basis for statutory compensation and attorney fees requested shall be set out in the body of the petition for distribution or on a separate schedule as required per California Rules of Court, rule 7.705.

(Subd (b) adopted effective July 1, 2009; previously adopted as unlettered portion of Rule 7.36 effective July 1, 1988.)

(Rule 7.22 amended and renumbered effective July 1, 2009; adopted as Rule 7.36 effective July 1, 1988; former Rule 7.22, which concerned the filing of creditor claims, repealed effective July 1, 2009.)

7.23 **PARTIAL ALLOWANCE OF STATUTORY COMPENSATION OR ATTORNEY FEES**

a. **COURT ORDER REQUIRED**

A personal representative may not pay an advance on statutory compensation or attorney fees without prior court order. Petitions for an advance of statutory compensation or attorney fees may not be brought ex parte.

(Subd (a) adopted effective July 1, 2009.)

b. **REQUIREMENT OF INVENTORY AND APPRAISAL; ACCOUNTS**

Notwithstanding Probate Code section 10830, the court shall not consider a petition seeking an advance of statutory compensation or attorney fees unless the personal representative's Inventory and Appraisal is filed prior to or concurrently with the petition. The court prefers that attorney fees not be requested until the first account has been filed.

(Subd (b) adopted effective July 1, 2009.)

c. **AMOUNT OF STATUTORY COMPENSATION OR ATTORNEY FEES PERMITTED AS AN ADVANCE**

Any allowance for statutory compensation or attorney fees will be made in accordance with the work actually performed. Where no accounting is filed, the allowance may not exceed 50% of the statutory compensation computed upon the total value appearing in the inventories filed to that time. Where an accounting is filed, the allowance may not exceed 75 % of the statutory compensation so computed.

(Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.37 effective July 1, 1988.)

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d. APPORTIONMENT OF FEES FOR SUCCESSIVE ATTORNEYS

Except in a case in which there is an agreement in writing on apportionment, where the personal representative has been represented by successive attorneys, fees will not ordinarily be apportioned to a prior attorney for the personal representative until the final accounting has been approved.

(Subd (d) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.37 effective July 1, 1988.)

(Rule 7.23 amended and renumbered effective July 1, 2009; adopted as Rule 7.37 effective July 1, 1988; previously amended effective July 1, 1989.)

7.24 APPORTIONMENT OF STATUTORY COMPENSATION BETWEEN TWO OR MORE PERSONAL REPRESENTATIVES

If the statutory compensation is to be divided among co-personal representatives, the petition shall set out facts upon which the court can base the apportionment.

(Rule 7.24 amended and renumbered effective July 1, 2009; adopted as Rule 7.38 effective July 1, 1988.)

7.25 EXTRAORDINARY COMPENSATION FOR PERSONAL REPRESENTATIVE; EXTRAORDINARY ATTORNEY FEES

a. CONTENTS OF PETITIONS OR DECLARATIONS FOR EXTRAORDINARY COMPENSATION OR FEES

All applications for extraordinary compensation for the personal representative's services and for extraordinary attorney's fees must be supported in the petition or in the separate verified declaration requesting said fees. At a minimum, the declaration or petition shall state:

- (1) The nature, necessity, success, cost in time, detail of the services performed and value of the services believed to warrant additional fees;
- (2) The amount requested; and,
- (3) The number of hours spent on ordinary services.

Records of time spent, without substantiated information, are not adequate.

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(Subd (a) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.39 effective July 1, 1988.)

b. FACTORS THAT WILL NOT SUPPORT A REQUEST FOR EXTRAORDINARY COMPENSATION OR FEES

The routine conduct of any proceeding relating to the collection of assets, processing of claims, conduct of estate administration or distribution will not, in the absence of special circumstances or problems, justify an extraordinary fee.

(Subd (b) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.39 effective July 1, 1988.)

(Rule 7.25 amended and renumbered effective July 1, 2009; adopted as Rule 7.39 effective July 1, 1988.)

7.26 DISTRIBUTIVE CONTINGENCIES

If the right of a beneficiary to distribution of part of the estate is dependent upon the occurrence of an event (e.g., death of a parent), the petition must allege the occurrence of that event and the order must contain a finding of the occurrence of that event.

(Rule 7.26 renumbered effective July 1, 2009; adopted as Rule 7.41 effective July 1, 1988.)

7.27 CONTENTS OF DECREE OF PARTIAL OR FINAL DISTRIBUTION

a. WHEN PROPOSED DECREE REQUIRED

The proposed form of Decree of Distribution shall be filed with any petition for partial or final distribution.

(Subd (a) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

b. DESCRIPTION OF PROPERTY TO BE DISTRIBUTED

The distribution of property must be separately stated in detail, listing a description of the property to be distributed under the name of each beneficiary. Real estate shall be legally described and street address, if any, shall be included. The decree must be complete in itself. Description by reference to the inventory is not acceptable. In decrees for final distribution, the distribution schedule shall include a summary showing the value of the estate distributed to each beneficiary and the total estate distributed which must agree with "Property on Hand" as

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shown on the final account's Schedule F and in the summary of account. If any beneficiaries previously received an early distribution, the decree shall so state.
(Subd (b) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

c. TRACING REQUIRED FOR INTESTATE DECEDENT

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

(Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.42 effective July 1, 1988.)

(Rule 7.27 amended and renumbered effective July 1, 2009; adopted as Rule 7.42 effective July 1, 1988; previously amended effective July 1, 1989.)

7.28 DISTRIBUTIONS TO TRUSTS

a. DISTRIBUTIONS TO TESTAMENTARY TRUSTS

The provisions of a decree of distribution establishing a testamentary trust shall include all of the terms of the will relating to the trust. Per California Rules of Court, rule 7.650, the provisions of the trust shall be stated in the present tense and in the third person, and shall not quote the will verbatim.

(Subd (a) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.43 effective July 1, 1988.)

b. DISTRIBUTIONS TO INTER VIVOS TRUSTS

A decree of distribution which distributes assets to an inter vivos trust shall name the trust and specify the name of the trustee to receive the assets. The decree of distribution shall not be approved absent a declaration by the trustee that he or she has in fact accepted the trust. A decree of distribution for a decedent's estate shall not name as beneficiaries of the estate in the distribution plan any beneficiaries who are entitled to distributions from the trust.

(Subd (b) adopted effective July 1, 2009.)

(Rule 7.28 amended and renumbered effective July 1, 2009; adopted as Rule 7.43 effective July 1, 1988; former Rule 7.28, which concerned overbids, repealed effective July 1, 2009.)

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7.29 JOINT TENANCY ASSETS

In the absence of prior court determination or authorization, joint tenancy assets of the decedent and a person other than the decedent's spouse should not be inventoried as assets of the probate estate. However, an asset held in joint tenancy between the decedent and the decedent's spouse, or former spouse in appropriate cases, shall be inventoried if there is an unadjudicated allegation that the asset is in fact community property. A notation concerning the allegation shall be included in all inventory and appraisals until the asset's characterization is determined.

(Rule 7.29 amended and renumbered effective July 1, 2009; adopted as Rule 7.49 effective July 1, 1988; former Rule 7.29, which concerned increased bid forms, repealed effective July 1, 2009.)

7.30 PERSONAL REPRESENTATIVE COMPENSATION AND ATTORNEY FEES IN CONNECTION WITH TERMINATION OF A JOINT TENANCY OR HANDLING OF OTHER NONPROBATE ASSETS

Assets that pass outside of probate are outside the court's jurisdiction. Therefore, a personal representative or his or her attorney shall not request payment from a probate estate for work done concerning joint tenancy assets or other nonprobate assets, and any request for such relief shall be denied. However, this rule does not prevent a request for extraordinary fees where the termination of joint tenancy with a previously deceased joint tenant is necessary to clear title to property in the decedent's estate.

(Rule 7.30 amended and renumbered effective July 1, 2009; adopted as Rule 7.50 effective July 1, 1988.)

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7.31 COURT INVESTIGATOR FEES FOR INVESTIGATION OF PETITION FOR PARTICULAR TRANSACTION

Pursuant to Probate Code section 3140, the court may, in its discretion, appoint a court investigator to evaluate a petition for a proposed transaction involving an incapacitated spouse's community property and report to the court regarding the transaction's advisability. Appointment of a court investigator for such an investigation shall result in an assessment against the petitioning party for the costs of the investigation. The fee amount is determined by the court on an annual basis and is subject to change. The assessed fee is payable within 30 days after the Assessment and Order for Payment is mailed by the Court Investigators Office.

(Rule 7.31 adopted effective July 1, 2009.)

7.32 NOTICE OF PETITION FOR DISTRIBUTION [REPEALED]

(Rule 7.32 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.33 ACCOUNTING (PROBATE CODE SECTION 10900) [REPEALED]

(Rule 7.33 repealed effective July 1, 2009; adopted effective July 1, 1988; amended effective July 1, 1989.)

7.34 ACCOUNTS REQUIRED ANNUALLY [REPEALED]

(Rule 7.34 repealed effective July 1, 2009; adopted effective July 1, 1989.)

7.35 WAIVER OF ACCOUNTING (PROBATE CODE SECTION 933; 10954) [REPEALED]

(Rule 7.35 repealed effective July 1, 2009; revised effective July 1, 1989; adopted effective July 1, 1988.)

7.36 [RESERVED]

7.37 [RESERVED]

7.38 [RESERVED]

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7.39 [RESERVED]

7.40 CREDITOR'S CLAIMS [REPEALED]

(Rule 7.40 revised effective July 1, 1989; adopted effective July 1, 1988.)

7.41 [RESERVED]

7.42 [RESERVED]

7.43 [RESERVED]

7.44 REQUIRED SHOWING (PROBATE CODE SECTION 12250) [REPEALED]

(Rule 7.44 repealed effective July 1, 2009; adopted effective July 1, 1988; previously amended effective July 1, 1989; adopted effective July 1, 1988.)

7.45 – 7.49 [RESERVED]

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7.50 BENEFICIARIES OF TESTAMENTARY TRUST TO BE LISTED IN PETITION FOR LETTERS TESTAMENTARY

All petitions involving a testamentary trust must set forth the names and last known addresses of all vested and contingent beneficiaries.

(Rule 7.50 amended and renumbered effective July 1, 2009; adopted as Rule 7.45 effective July 1, 1988.)

7.51 TRUSTEE FEES

a. **APPLICABILITY OF RULE**

This rule applies to all trusts subject to the continuing jurisdiction of the court, to petitions for approval of trustee compensation, and to objections to petitions for trustee compensation.

(Subd (a) adopted effective July 1, 2009.)

b. **PRESUMPTION OF REASONABLE COMPENSATION FOR TRUSTEES**

Trustee compensation shall be presumed reasonable if it does not exceed 1% (one percent) of the asset value of the estate. However, nothing in this rule limits the court's discretion to find as unreasonable a fee totaling less than 1%.

(Subd (b) adopted effective July 1, 2009.)

c. **REQUEST FOR ADDITIONAL COMPENSATION**

A trustee may request fees in excess of 1% (one percent) of the asset value of the estate. A trustee requesting such relief shall do one of the following:

- (1) File a declaration from the beneficiaries indicating awareness of the fees being requested and a statement waiving objection to those fees.
- (2) File a declaration detailing the services rendered justifying the fee requested.

(Subd (c) amended and relettered effective July 1, 2009; adopted as unlettered portion of Rule 7.46 effective July 1, 1988.)

(Rule 7.51 amended and renumbered effective July 1, 2009; adopted as Rule 7.46 effective July 1, 1988; previously amended effective July 1, 1988; former Rule 7.51, which concerned miscellaneous provisions, repealed effective July 1, 2009.)

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7.52 INFORMATION TO BE INCLUDED IN PETITIONS CONCERNING TRUSTS

All petitions concerning trusts shall indicate in the pleading title the Probate Code section(s) under which the petition is brought or which supports the relief requested. For example, a petition seeking orders concerning the internal affairs of a trust shall cite Probate Code section 17200 in the pleading title.

(Rule 7.52 adopted effective July 1, 2009; former Rule 7.52, which concerned scope of guardianship rules, repealed effective July 1, 2009.)

7.53 GENERAL PROCEDURES FOR SPECIAL NEEDS TRUSTS

a. ESTABLISHMENT OF SPECIAL NEEDS TRUSTS IN SOLANO COUNTY

If a special needs trust is included as part of a minor's compromise or other judgment entered in Solano County and the trust is to be administered in Solano County, the following procedures shall be followed:

- (1) A petition to approve the terms of the special needs trust shall be filed in the civil action or petition to approve minor's compromise. The judge assigned to hear the civil action or petition to approve minor's compromise shall approve the terms of the special needs trust per Probate Code section 3604.
- (2) Once so approved and signed, the original special needs trust instrument and a copy of the order approving the trust shall be filed in a separate file and assigned a probate case number. No filing fee shall be charged for said filing as the trust instrument is the result of a petition filed to approve a minor's compromise claim per Probate Code section 3600 et seq. Government Code §70655.
- (3) The party filing the special needs trust instrument per subsection (2) shall file a notice in the civil action file or the minor's compromise file indicating the case number assigned to the probate file containing the special needs trust.

(Subd (a) adopted effective July 1, 2009.)

b. TRANSFER OF SPECIAL NEEDS TRUSTS INTO SOLANO COUNTY

Whenever a special needs trust is transferred into Solano County and the court file being transferred does not contain the original special needs trust instrument, the

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trustee shall provide the court with the original trust document within 90 days after the court file is received by Solano County.

(Subd (b) adopted effective July 1, 2009.)

(Rule 7.53 adopted effective July 1, 2009; former Rule 7.53, which concerned the forms to filed at the beginning of a guardianship proceeding, repealed effective July 1, 2009.)

7.54 ACCOUNTINGS AND REPORTS OF SPECIAL NEEDS TRUSTS

a. EXPENDITURES ON BEHALF OF BENEFICIARY

In all accountings for special needs trusts, the trustee shall provide an explanation of any unusual or extraordinary expenses incurred by the trustee on behalf of the beneficiary. These include, but are not limited to, payment of all expenses associated with real property partially owned by the trust, payment of automobile insurance for a vehicle not owned by the trust, acquisition or maintenance of assets not ordinarily used by a beneficiary with the beneficiary's type of disability, and so forth.

(Subd (a) adopted effective July 1, 2009.)

b. HIRING OF AGENTS

The court acknowledges that trustees of special needs trusts often hire agents to advise them concerning the administration of the special needs trusts and the provision of services to the beneficiary. A trustee hiring such an agent shall specify in any report or accounting seeking approval of payment to said agent the type of and need for the services provided by the agent. The trustee shall also include a declaration from the agent concerning the hours spent working with the trustee and the amount of compensation sought.

(Subd (b) adopted effective July 1, 2009.)

c. PARENTS AS CAREGIVERS TO CHILD AS BENEFICIARY

In an account or report indicating that a parent was hired to provide caregiver services to his or her child, the trustee shall provide the following information:

- (1) A description of the services rendered by the parent that are above and beyond the care normally provided by a parent to a child.
- (2) A description of the special skills possessed by the parent enabling him or her to perform these services.

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- (3) The benefit to the beneficiary of having the parent perform the services instead of a professional caregiver.
- (4) The hours worked by the parent.
- (5) The hourly rate being paid to the parent and a justification of that rate. Justification may include a comparison to the rate charged by a professional for the same or similar services.
- (6) Whether caregiving services are being provided through IHSS and if so, the frequency and type of the services provided.
- (7) Whether insurance is in place to cover the caregiver parent in case of injury and if so, the amount of the periodic premium being paid by the parent or the trust.

(Subd (c) adopted effective July 1, 2009.)

(Rule 7.54 adopted effective July 1, 2009; former Rule 7.54, which concerned notice of a petition to appoint a guardian, repealed effective July 1, 2009.)

7.55 COMPENSATION OF CONSERVATOR FROM TRUST

If a conservatee is also the beneficiary of a trust and the compensation of a conservator of the person is sought from the trust, a petition seeking approval of the amount of compensation payable to the conservator shall first be filed in the conservatorship matter. The petition shall include a declaration by the trustee as to whether there are sufficient funds in the conservatorship estate to allow for the compensation sought. A trustee shall not pay a conservator's compensation without a court order approving said compensation by the judge assigned to hear the conservatorship matter.

(Rule 7.55 adopted effective July 1, 2009; former Rule 7.55, which concerned appointment of court investigators, repealed effective July 1, 2009.)

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7.56 COURT INVESTIGATOR FEES [REPEALED]

(Rule 7.56 repealed effective July 1, 2009; adopted as Rule 7.54 effective July 1, 1989.)

7.57 TEMPORARY GUARDIANSHIPS [REPEALED]

(Rule 7.57 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.58 EX PARTE APPLICATIONS FOR TEMPORARY GUARDIANSHIP OR OTHER TEMPORARY ORDERS [REPEALED]

(Rule 7.58 repealed effective July 1, 2009; adopted as Rule 7.55 effective July 1, 1988.)

7.59 CONTESTED GUARDIANSHIPS [REPEALED]

(Rule 7.59 repealed effective July 1, 2009; adopted as Rule 7.56 effective July 1, 1988.)

7.60 ORDERS FOR VISITATION IN GUARDIANSHIPS [REPEALED]

(Rule 7.60 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.61 GUARDIANSHIPS OF THE ESTATE – INVENTORIES AND ACCOUNTINGS; SERVICE OF ACCOUNTINGS; NOTICE OF HEARINGS ON OBJECTIONS TO ACCOUNTINGS [REPEALED]

(Rule 7.61 repealed effective July 1, 2009; adopted as Rule 7.59 effective July 1, 1992.)

7.62 GUARDIANSHIPS OF THE ESTATE: REPORTS ACCOMPANYING ACCOUNTS [REPEALED]

(Rule 7.62 repealed effective July 1, 2009; adopted as Rule 7.61 effective July 1, 1989.)

7.63 ALLOWANCE OF FEES IN GUARDIANSHIP PROCEEDINGS [REPEALED]

(Rule 7.63 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.64 INVESTMENTS BY GUARDIAN OF THE ESTATE [REPEALED]

(Rule 7.64 repealed effective July 1, 2009; adopted effective July 1, 1988.)

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7.65 APPOINTMENT OF MINOR’S COUNSEL [REPEALED]

(Rule 7.65 repealed effective July 1, 2009; adopted effective July 1, 2008.)

7.66 TERMINATION OF GUARDIANSHIP [REPEALED]

(Rule 7.66 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.67 COOPERATION WITH COURT INVESTIGATOR [REPEALED]

(RULE 7.67 REPEALED EFFECTIVE JULY 1, 2008; ADOPTED EFFECTIVE JULY 1, 1988.)

7.68 OTHER PROTECTIVE PROCEEDINGS FOR MINORS [REPEALED]

(Rule 7.68 repealed effective July 1, 2008; adopted effective July 1, 1988.)

7.69 PETITION FOR APPOINTMENT [REPEALED]

(Rule 7.69 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.70 APPOINTMENT OF COURT INVESTIGATOR [REPEALED]

(Rule 7.70 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.71 TEMPORARY CONSERVATORSHIP [REPEALED]

(Rule 7.71 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.72 LEGAL CAPACITY OF CONSERVATEE [REPEALED]

(Rule 7.72 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.73 INDEPENDENT EXERCISE OF POWERS [REPEALED]

(Rule 7.73 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.74 BOND – CONDITIONS – AMOUNT [REPEALED]

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(Rule 7.74 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.75 ACCOUNTINGS IN CONSERVATORSHIP PROCEEDINGS [REPEALED]

(Rule 7.75 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.76 FREQUENCY OF ACCOUNTS [REPEALED]

(Rule 7.76 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.77 ASSESSMENT AND ORDER FOR COURT INVESTIGATION [REPEALED]

(Rule 7.77 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.78 ALLOWANCE OF FEES [REPEALED]

(Rule 7.78 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.79 ORDERS FOR SUPPORT AND SUBSTITUTED JUDGMENT [REPEALED]

(Rule 7.79 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.80 INVESTMENT BY CONSERVATOR [REPEALED]

(Rule 7.80 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.81 TERMINATION [REPEALED]

(Rule 7.81 repealed effective July 1, 2009; adopted effective July 1, 1988.)

7.82 APPOINTMENT OF SUCCESSOR CONSERVATOR [REPEALED]

(Rule 7.82 repealed effective July 1, 2009; adopted effective July 1, 1988.)

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Appendices

APPENDIX 7-A: PROBATE RULES CONVERSION TABLE

Effective July 1, 2009

<i>Rule Title</i>	<i>New Rule Number</i>	<i>Former Rule Number</i>
Scope of Probate Rules	7.1	N/A
Use of Judicial Council Forms; Format of Pleadings	7.2	7.1
Signatures and Verifications of Pleadings	7.3	7.2
Titles [<i>Repealed</i>]	N/A	7.3
Copies of Orders [<i>Repealed</i>]	N/A	7.4
Wills and Codicils as Exhibits to Petition [<i>Repealed</i>]	N/A	7.5
Bonding of Personal Representative	7.4	7.6
Declination of Nominated Executor	7.5	7.7
Fees [<i>Repealed</i>]	N/A	7.8
Calendaring [<i>Repealed</i>]	N/A	7.9
Notices	7.6	7.10
Notification to Court of Continuances, Drops, or Stipulations	7.7	N/A
Pregrants in Probate Matters	7.8	N/A
Appearances at Hearings	7.9	7.11
Short Cause Calendar [<i>Repealed</i>]	N/A	7.12
Long Cause Calendar [<i>Repealed</i>]	N/A	7.13
Ex Parte Applications	7.10	N/A
Appointment of Special Administrator	7.11	7.14
Information to be contained in Petitions for Probate of Will and for Letters Testamentary; for Letters of Administration; or for Letters of Administration with Will Annexed (Probate Code section 8000 et seq.)	7.12	7.15
Attorney's Names [<i>Repealed</i>]	N/A	7.16
Proof of Wills [<i>Repealed</i>]	N/A	7.17
Preparation of Orders	7.13	7.18
Material to be Included in Probate Orders [<i>Repealed</i>]	N/A	7.19
Approval of Funeral and Internment Claims [<i>Repealed</i>]	N/A	7.20
Interest on Funeral and Internment Claims	7.14	7.21
Mode of Filing Creditors' Claim [<i>Repealed</i>]	N/A	7.22
Real Estate in Inventory and Appraisal	7.15	7.23
Cash Deposit	7.16	7.24
Second Deeds of Trust	7.17	7.25
Earnest Money Deposit by Overbidder	7.18	7.26
Appearances by Counsel	7.19	7.27
Overbids [<i>Repealed</i>]	N/A	7.28
Increased Bid Forms [<i>Repealed</i>]	N/A	7.29

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<i>Rule Title</i>	<i>New Rule Number</i>	<i>Former Rule Number</i>
Conditional Sales of Real Property	7.20	7.30
Broker’s Commissions	7.21	7.31
Notice of Petition for Distribution <i>[Repealed]</i>	N/A	7.32
Accounting (Probate Code Section 10900) <i>[Repealed]</i>	N/A	7.33
Accounts Required Annually <i>[Repealed]</i>	N/A	7.34
Waiver of Accounting (Probate Code Sections 933; 10954) <i>[Repealed]</i>	N/A	7.35
Statutory Compensation for Personal Representative and Attorney Fees	7.22	7.36
Partial Allowance of Statutory Compensation or Attorney Fees	7.23	7.37
Apportionment of Statutory Compensation Between Two or More Personal Representatives	7.24	7.38
Extraordinary Compensation for Personal Representative; Extraordinary Attorney Fees	7.25	7.39
Creditor’s Claims <i>[Repealed]</i>	N/A	7.40
Distributive Contingencies	7.26	7.41
Contents of Decree of Partial or Final Distribution	7.27	7.42
Distributions to Trusts	7.28	7.43
Required Showing (Probate Code Section 12250) <i>[Repealed]</i>	N/A	7.44
Beneficiaries to Be Listed in Petition <i>[Repealed]</i>	N/A	7.45
Trustee Fees <i>[Repealed]</i>	N/A	7.46
Spousal Set Asides – Requirements <i>[Repealed]</i>	N/A	7.47
Joint Tenancy Proceedings <i>[Repealed]</i>	N/A	7.48
Joint Tenancy Assets	7.29	7.49
Personal Representative Compensation and Attorney Fees in Connection with Termination of a Joint Tenancy or Handling of Other Nonprobate Assets	7.30	7.50
Court Investigator Fees for Investigation of Petition for Particular Transaction	7.31	N/A
Miscellaneous <i>[Repealed]</i>	N/A	7.51

NOTICE:
Former Rules 7.51 through 7.82, all of which concern conservatorships and guardianships, have been moved to Rule 15 effective July 1, 2009.
Please consult the table in Appendix 15-A for rule number conversions.