Superior Court of California
County of Solano

Rule 7 – Probate

PART ONE: Probate Proceedings Generally

7.1 SCOPE OF PROBATE RULES; DIRECT CALENDARING

a. **MATTERS TO WHICH RULE 7 APPLIES**
Except as otherwise provided elsewhere in these rules, these probate rules apply to all matters governed by the Probate Code, except probate guardianships and probate conservatorships, which are governed by Rule 15.
(Subd (a) amended effective January 1, 2012; adopted effective July 1, 2009.)

b. **DIRECT CALENDARING**
When a probate case is filed, or received and filed as a transfer from another county, the Clerk of the Court shall assign the case in a manner directed by the Supervising Judge of the Civil Division. The assignment to a judge shall be deemed to be for all purposes. The method of selection of the judge to be assigned to a case shall be designed to equally distribute the workload among the judges and best serve the court.
(Subd. (b) adopted effective January 1, 2012; former subd (b) repealed effective January 1, 2012.)

(Rule 7.1 amended effective January 1, 2012; adopted effective July 1, 2009; previously amended effective January 1, 2010.)

7.2 USE OF JUDICIAL COUNCIL FORMS; FORMAT OF PLEADINGS; CALENDARING

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 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.)

d. **CALENDARING PETITIONS**
Parties may contact the Probate Division calendaring clerk to reserve a hearing date on a probate petition. *Reservation of a calendar date does not automatically place the matter on the court's calendar.* The probate petition must be filed within three court days of reserving the date, otherwise the date reserved will be canceled. Except for petitions brought ex parte, probate petitions shall not be calendared for hearing until the moving party files a Notice of Hearing.
(Subd (d) amended effective January 1, 2012; adopted effective July 1, 2010.)

e. **FILING PETITIONS**
All petitions concerning trusts shall be filed at least 30 days prior to the desired or scheduled hearing date. All petitions concerning non-trust probate matters shall be filed at least 15 days prior to the desired or scheduled hearing date.
(Subd. (e) adopted effective January 1, 2012.)

(Rule 7.2 amended effective January 1, 2012; adopted as Rule 7.1 effective July 1, 1988; previously amended effective January 1, 2009; previously amended and renumbered effective July 1, 2009; amended effective July 1, 2010.)

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.)

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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.)

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.)

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.)

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7.7 CONTINUANCES

a. **PROCEDURE TO OBTAIN CONTINUANCE**
No matter shall be continued unless the department of the court to which the matter is assigned approves of the continuance date.

If the proposed continuance is by stipulation, the stipulation shall be submitted to the court for review and approval of the proposed continuance date. If the proposed continuance date is approved, an amended *Notice of Hearing* (Judicial Council form DE-120) with the new hearing date may thereafter be submitted for filing. A copy of the stipulation shall be submitted to the calendar clerk concurrently with the amended *Notice of Hearing*, along with all appropriate filing fees.

If the proposed continuance is not by stipulation, the continuance shall be requested either through a notice of motion or through the ex parte process as set forth in local rule 7.10. If the proposed continuance date is approved, an amended *Notice of Hearing* (Judicial Council form DE-120) with the new hearing date may thereafter be submitted for filing. A copy of the court's order granting the continuance shall be submitted to the calendar clerk concurrently with the amended *Notice of Hearing*, along with all appropriate filing fees.

Unless the continuance was ordered by the court on its own motion, a *Notice of Hearing* is not sufficient, in and of itself, to cause the recalendaring of a hearing.
(Subd (a) amended effective January 1, 2013; adopted effective July 1, 2009.)

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 amended effective January 1, 2013; adopted effective July 1, 2009.)

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7.8 PREGRANTS IN PROBATE MATTERS

A pregrant order on a probate matter will be available after 2:00 p.m. on the court day immediately preceding the scheduled hearing by signing onto the court's web site at www.solano.courts.ca.gov and clicking "Tentative Rulings" or by telephoning the court at (707) 207-7331.

(Rule 7.8 amended effective January 1, 2012; adopted effective July 1, 2009; previously amended effective January 1, 2010.)

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:

(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.)

c. **TELEPHONIC APPEARANCE**

Telephonic appearance will be permitted when authorized by California Rule of Court, rule 3.670 and Solano County Local Rules, rule 4.12(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 effective January 1, 2010; 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 effective January 1, 2010; amended and renumbered effective July 1, 2009; adopted as Rule 7.11 effective July 1, 1989.)

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.)

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:

(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.)

(Rule 7.12 amended and renumbered effective July 1, 2009; adopted as Rule 7.15 effective July 1, 1988.)

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.)

7.14 INTEREST ON FUNERAL AND INTERMENT 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 interment 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.)

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.)

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 casher'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.)

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.)

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.)

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.)

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.
(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 PETITION AND 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 in both the petition and the decree, 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 and of itself. Description by reference to the inventory is not acceptable. In both the petition and decree 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 shown on the final account's Schedule F and in the summary of account. If any beneficiaries previously received an early distribution, the petition and the decree shall so state.
(Subd (b) amended effective January 1, 2010; 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.)

d. **OTHER ITEMS TO BE INCLUDED IN THE PETITION AND DECREE**

(1) A petition and any decree for distribution shall include the names and addresses of all persons who are present and future distributees of the estate, and shall indicate whether each person listed is an adult or a minor. In all cases where a minor is a distributee, the minor's age and birth date must be stated in the petition and the decree for distribution.
(Subd (1) adopted effective January 1, 2010.)

(2) If distribution will not be made directly to the beneficiary, the name, address and fiduciary capacity of the recipient must be stated in the petition and the decree for distribution. If distribution is to be made to an assignee of an heir or devisee, a copy of the assignment and the terms thereof must be on file.
(Subd (2) amended effective January 1, 2013; adopted effective January 1, 2010.)

(3) If a reserve is sought, the petition for final distribution must specifically set forth the proposed use for the retained funds (e.g., income taxes, closing costs, property tax assessments, etc.).
(Subd (3) adopted effective January 1, 2013.)

(Subd (d) amended effective January 1, 2013; adopted effective January 1, 2010.)

(Rule 7.27 amended effective January 1, 2013; adopted as Rule 7.42 effective July 1, 1988; previously amended effective July 1, 1989; amended and renumbered effective July 1, 2009; amended effective January 1, 2010.)

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. If a trust beneficiary will receive distribution upon reaching a specific age, the petition for distribution and decree thereon must state the age and birthdate of the beneficiary.
(Subd (a) amended effective January 1, 2010; 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 effective January 1, 2010; 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.)

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.)

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 RECEIPT OR WAIVER OF ACCOUNT SIGNED BY ATTORNEY IN FACT

Any waiver of account or any receipt of a distribution filed with the court that has been signed by an "attorney in fact" on a beneficiary's behalf shall include a copy of the power of attorney granting authority to the attorney in fact to waive the account or sign the receipt.

(Rule 7.32 adopted effective July 1, 2010.)

7.33 REIMBURSEMENT OF EXPENSES OF ESTATE ADMINISTRATION

a. **EXPENSES THAT MAY BE REIMBURSED**

The following may be reimbursed to a personal representative and/or a personal representative's counsel as expenses of administration:

(1) Court filing fees;
(2) Newspaper publication fees;
(3) Surety bond premium;
(4) Probate referee appraisal fees; and,
(5) Other expenses specifically approved by the court.

b. **EXPENSES THAT MAY NOT BE REIMBURSED**

Unless the requesting party demonstrates extraordinary circumstances, the following will not ordinarily be reimbursed to a personal representative and/or a personal representative's counsel as expenses of administration:

(1) Secretarial and word processing time;
(2) Computer time, including expenses incurred in performing computerized legal research;
(3) Local telephone calls;
(4) Facsimile transmissions;
(5) Local mileage and parking; and,
(6) Postage and photocopies.

PART TWO: Probate Proceedings Other Than Trusts

(Rule 7.33 adopted effective January 1, 2013.)

7.34 – 7.49 [RESERVED]

PART THREE: Trusts

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 at the time the compensation is sought. However, nothing in this rule limits the court's discretion to find as unreasonable a fee totaling less than 1%, or to approve a trustee's fee that exceeds 1%.
(Subd (b) amended effective January 1, 2012; 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 effective January 1, 2012; adopted as Rule 7.46 effective July 1, 1988; previously amended effective July 1, 1988; amended and renumbered effective July 1, 2009.)

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Rule 7 – Probate

PART THREE: Trusts

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.)

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, 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. The petition shall include the complete terms of the proposed trust.

(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 the county in which the trust is to be administered pursuant to that county's procedures. If the trust is to be administered in Solano County, 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 county in which the trust is being administered and the case number assigned to the probate file containing the special needs trust.

(Subd (a) amended effective January 1, 2012; 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 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 amended effective January 1, 2012; adopted 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.
(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.)

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 or estate, or his or her attorney, is sought from the trust in part or in whole, the conservator shall first seek approval of the compensation in the conservatorship matter. The petition shall include a declaration by the trustee as to whether there are sufficient funds in the trust to allow for the compensation sought. If the conservatorship of the estate has sufficient funds to pay for the requested compensation, the conservator shall explain why compensation is sought from the trust and not the estate. 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 amended effective January 1, 2012; adopted effective July 1, 2009.)

7.56 TRUST ACCOUNTINGS FILED WITH THE COURT

Any time a petition seeking approval of a trust accounting is filed with the court, the filing party shall simultaneously submit to the court an additional courtesy copy of the petition and the accounting.

(Rule 7.56 adopted effective July 1, 2010.)