



*Superior Court of California, County of San Joaquin*

180 E. Weber Avenue, Ste. 1306J

Stockton, CA 95202

Telephone: (209) 992-5695

September 12, 2023

To All Interested Persons,

Re: Letter of Circulation Re: Local Rule Revisions Effective January 1, 2024.

Attached you will find the revisions/additions to the following local rules:

(**Red** indicates changes; text ~~lined out~~ indicates deletions)

**Rule 1.**      **General - 1-113**

**Rule 4.**      **Probate – 4-106, 4-108, 4-121, 4-122, 4-212, 4-216, 4-217, 4-509**

We are submitting the revised rules to you in compliance with the Local Rules filing requirements under Government Code section 68071 and California Rules of Court Rule 10.613(c) and (d). We encourage your comments.

You may send your comments to [localrules@sjcourts.org](mailto:localrules@sjcourts.org) with a subject line stating “Comments on Proposed Rule changes.”

Comments must be received in our office no later than 5 p.m., Monday, October 30, 2023.

Sincerely,

*Ruby Atwal*

Executive Assistant

1-113. ELECTRONIC RECORDING OF COURT PROCEEDINGS (Eff. 1/1/2023)

- A. Pursuant to Government Code §69957, in limited civil actions and criminal misdemeanor and infraction proceedings, ~~the court, if an official court reporter or an official reporter pro tempore is unavailable to report an action or proceedings in a court, the court may utilize electronic recording as a means of generating a record of the proceedings, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. at its sole discretion, may utilize electronic recording as a means of generating a verbatim record of proceedings.~~ In these instances, a transcript derived from the electronic recording serves shall be utilized whenever a transcript of court proceedings is required. as the official record of the proceeding. The parties to such proceeding may obtain a copy of the recording from the Records Management Department. Parties will be responsible for all associated fees and costs. To obtain a transcript derived from the electronic recording, the parties to such proceeding may contact the Records Management Division. The requesting party will be responsible for all associated fees and costs to obtain the transcript of the electronic recording.
- B. An electronic recording may also be made for the purpose of monitoring subordinate judicial officer performance. In these instances, the electronic recording shall not be used for any other purpose and shall not be made publicly available. In accordance with Government Code §, 69957, the court will post notice outside of a courtroom where proceedings are being recorded.
- C. ~~The court will post notice outside of a courtroom where proceedings are being recorded pursuant to this Local Rule. (Eff. 01/01/23)~~

4-106. EX PARTE APPLICATIONS (Eff. 01/01/20)

- A. The following ex parte applications are exempt from the notice requirements of this chapter:
1. Ex parte application for Withdrawal of Funds from Blocked Account;
  2. Ex parte application for Appointment of Guardian Ad Litem;

3. Ex parte application to Increase Bond (Local Form) (only when increasing bond, not for a blocked account or to decrease bond);
4. Ex parte application to Petition for Final Discharge and Order;
5. Exceptions contained in CRC 3.1207.

A.B. The Probate Court will not entertain any ex parte petition, application or motion that does not comply with California Rules of Court 3.1200 through 3.1206, and is not accompanied by a declaration that makes "an affirmative factual showing... containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." California Rule of Court 3.1202(c).

C. If an ex parte petition for appointment of any conservator or a guardian is reviewed and given a date, the court will require five (5) days' notice has been given (Probate Code sections 2250(e) and 2250.2 through 2250.6), unless the petitioner has shown both irreparable harm or immediate danger, and "good cause" for waiving the notice requirements.

D. Except as provided in this rule and in Rule 3.1204 of the California Rules of Court, no application for an order shall be made ex parte unless the applicant shows by written declaration under oath either that a reasonable effort has been made to give notice to the adverse party or attorney, that notice would be inappropriate or impractical or would result in irreparable injury, or that the order would not result in a significant direct burden or inconvenience to the adverse party. Mandatory form SJPR-\*\*\*\* "Declaration Re: Notice of Ex-Parte Application" must be used and if needed form SJPR-\*\*\*\* "Attachment to Declaration Re: Notice of Ex-Parte Application."

B.E. Counsel requesting the waiver or shortening of any notice time periods prescribed by the Probate Code must submit a Declaration-declaration of Due Diligence to the Court citing the specific notice provision at issue, setting forth facts relating to the efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice; and explaining the "good cause" for waiving or shortening the time. Mandatory form SJPR-\*\*\*\* "Declaration Re: Notice of Ex-Parte Application" must be used.

~~C.F.~~ A party seeking an ex parte order must submit the application and all supporting papers and fees to the Clerk for filing no later than 24 hours prior to the hearing.

~~D.G.~~ An ex parte order will not be granted unless accompanied by a verified petition (or a sworn declaration where applicable) containing facts and law to justify granting the requested relief.

~~E.H.~~ Ex parte petitions filed in decedent's estates for the sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition.

~~F.I.~~ The Clerk may reject Petitions that do not comply with the subsections above. (Eff. 01/01/20; Rev. 01/01/23)

4-108. ORDERS – CONTENTS, ATTACHMENTS & SIGNATURE PAGE (Eff. 01/01/14)

A. All orders and judgments in probate matters must be completed so that their general effect may be determined without reference to the petition on which they are based. All matters actually passed on by the court, including the relief granted, the names of persons and description of property (and if real property involved, the legal description and/or APN thereof), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements, must be set forth with the same particularity which is required in judgments in civil matters.

B. Riders and exhibits should not be attached to an order or decree; except that an exhibit setting forth legal descriptions, a statement of trust terms, and the like may be attached if specifically incorporated in the body of the order or decree.

C. The Judge's signature shall appear at the end of the last attachment with an appropriate indication of that fact on the last page of the body of the order or decree. The Judge's signature should not appear on a page that doesn't contain any other text.

~~C.D.~~ Proposed Orders or Judgements should be presented to the Clerk's Office with the filing of the petition, motion, application or request. (Eff. 01/01/14; Rev. 1/1/2024)

#### **4-121. LODGING OF REQUIRED DOCUMENTS**

- A. All original documents submitted by fiduciaries in support of their Inventory and Appraisals or accounts as required by Local Rules 4-122 or Probate Code 2620(c), including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills must be lodged separately from the Inventory and Appraisal or accounting as a confidential document complying with California Rules of Court, Rule 2.100 et seq.
- B. The caption page for the document must be the mandated local form SJPR-\*\*\*\* "Financial Document(s) Cover Sheet," and must include a statement regarding the total number of pages (including the cover sheet) submitted and a declaration by the fiduciary under penalty of perjury stating the documents attached are the originals. If original documents cannot be obtained and copies are lodged in lieu of the originals, a Declaration setting forth the reason why the originals are not available shall be lodged with the copies.
- C. To facilitate scanning, the documents must be loosely bound and not stapled.
- D. To facilitate return of the original document(s), the fiduciary must submit, at the time of filing, a self-addressed stamped envelope for mailing the document(s) or an attorney service pick-up slip.
- E. Documents scanned by the Court shall constitute the Court's permanent record of such documents. After the documents are scanned, the Clerk is directed to return the documents to the fiduciary. The Court will retain the documents in electronic form only. The fiduciary must retain the originals at least until the order approving the final account is final. (Eff. 01/01/24)

#### **4-122. DECLARATION REGARDING ASSETS ON INVENTORY AND APPRAISAL**

- A. When a minor, conservatee, or decedent's estate receives an asset as the heir or beneficiary of a decedent's estate, the guardian, conservator, or personal representative who receives the asset shall file concurrent with the filing of the Inventory and Appraisal a declaration and attach a copy of the Order of Partial or Final Distribution, Spousal or Domestic Partner Property Order, Affidavit re Real Property of Small Value, Order Determining Succession to Real Property, or Affidavit for Collection or Transfer of Personal Property from the decedent's estate.
- B. When a minor or conservatee receives an asset that was the subject of an order under Probate Code 3600 et seq., the guardian or conservator who receives the

asset shall file concurrent with the filing of the Inventory and Appraisal a declaration and attach a copy of the order under Probate Code 3600 et seq.

- C. When a minor, conservatee, or decedent's estate receives proceeds as the beneficiary of a life insurance policy, the guardian, conservator, or personal representative who receives the asset shall file concurrent with the filing of the Inventory and Appraisal a declaration and attach a copy of the check received from the life insurance company.
- D. When a minor, conservatee, or decedent's estate receives an asset as the heir or beneficiary of a deceased conservatee or ward, the guardian, conservator, or personal representative who receives the asset shall file concurrent with the filing of the Inventory and Appraisal a declaration and attach a copy of the Order that requires distribution of the asset from the estate of the deceased conservatee or ward.
- E. When a conservator, guardian, or personal representative files an Inventory and Appraisal that includes property to be appraised by the guardian or conservator or personal representative pursuant to Probate Code 2610(a) and/or Probate Code 8901(c) and (d), they shall concurrently lodge in the manner provided in Local Rule 4-121 the following:
  - 1. For accounts at a bank or other financial institution, account statements as defined in Probate Code 2620(c)(1) for each account showing the account\ balance as of the date of appointment of the guardian or conservator or the decedent's date of death. Submitting an account statement pursuant to this rule satisfies the requirement to file the statement pursuant to Probate Code 2620(c). Any variation between the statement and the balance reflected in the inventory or account that is not otherwise readily understandable from the statement shall be explained by a declaration filed with the lodged documents.
  - 2. For checks, a copy of the check.

When a conservator, guardian, or personal representative files an Inventory and Appraisal that includes a parcel of real property in California, they shall lodge concurrently with the filing of the Inventory and Appraisal a copy of the deed(s) by which the decedent acquired title to the property. (Eff. 01/01/24

4-212. FILING OF DEATH CERTIFICATE (Eff. 01/01/24)"RESERVED FOR FUTURE USE" (4-212 Repealed 07/01/22)

A copy of the decedent's death certificate, with the decedent's social security number redacted, shall be filed with an Petition for Probate (Probate Code 7000 et seq), Petitioner to Determine Succession to Real Property (Probate Code 13150 et seq), Spousal Property Petition (Probate Code 13500 et seq), or the lodging of an original Will pursuant to Probate Code 8200(a)(1). (Eff. 01/01/24)

4-216. "RESERVED FOR FUTURE USE" (4-216 Incorporated into 4-215 07/01/22)ACCOUNTING FOR RESERVE

If an order for final distribution of an estate of a decedent, ward, conservatee or trust includes a reserve of more than \$1,500.00, an accounting of the reserve shall be attached to the Ex Parte Petition for Final Discharge (Judicial Council form DE-295/GC-395). (Eff. 01/01/24)

4-217. "RESERVED FOR FUTURE USE" (4-217-216 Incorporated into 4-215 07/01/22)WAIVER OF ACCOUNT (Eff. 01/01/24)

For any waiver of account presented under Probate Code 10954, the person waiving the account shall complete and sign the mandatory local form SJPR-\*\*\*\* "Waiver of Accounting." (Eff. 01/01/24)

4-509. "RESERVED FOR FUTURE USE" (4-509 Repealed 01/01/24) DOCUMENTS  
ACCOMPANYING AN ACCOUNT TO BE LODGED, NOT FILED (Eff. 01/01/14)

~~The documents required by Probate Code section 2620(c) shall be lodged by the conservator or guardian, not filed, at the time the accounting is filed. The documents shall be attached to a cover sheet containing the case heading and a caption identifying the petition they accompany and the date time and department of the hearing. Upon settlement of the account, the party who lodged them may retrieve the lodged documents, to be held until such time as the appeal period has run, unless the Court orders otherwise. If the documents are not otherwise retrieved within thirty (30) days after the Court makes the final order in the related petition, the lodged documents may be destroyed by the Court.~~

~~If there are investments with a brokerage firm, the annual brokerage account statement shall be included with the required documents~~

~~If original documents cannot be obtained and copies are lodged in lieu of the originals, a Declaration setting forth the reason why the originals are not available shall be lodged with the copies. (Eff. 01/01/14; Rev. 07/01/2022)~~