

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES
– EFFECTIVE 7/1/2024

Rule – Civil

~~3-110. CLAIM OR ACTION ON BEHALF OF A MINOR OR DISABLED PERSON (Eff. 01/01/09) Where there is a judgment or settlement of claim, including a covenant not to sue, relating to a minor or a person with disability, as defined by Probate Code section 3603, the procedures set forth in these rules in Part Eight of the Probate Rules, commencing with 4-801, apply. (Eff. 01/01/09)~~

3-110: Petitions for Approval of Compromise of Claim or Action for Minor or Person with A Disability:

- (a) Except as in subsections (b) and (c), a Petition for Approval of Compromise of Claim or Action for Minor or Person with a Disability may be filed and heard in the civil department in which the case is pending. The Petition may be filed under the same civil case number.
- (b) If there is no pending civil case, the Petition for Approval of Compromise of Claim or Action for Minor or Person with a Disability must be filed and heard in the probate department, with the procedures set forth in these rules in Part Eight of the Probate Rules, commencing with 4-801, applying.
- (c) If a Petition for Approval of Compromise of Claim or Action for Minor or Person with a Disability proposes to have the settlement funds distributable to the minor or person with a disability administered under a guardianship, conservatorship, discretionary trust or special needs trust, the Petition must be filed and heard in the probate department with the procedures set forth in these rules in Part Eight of the Probate Rules, commencing with 4-801, applying.

Rule 4 - Probate

4-101. ALL PETITIONS (Eff. 01/01/20)

INTRODUCTION

- A. General. The Probate Rules for San Joaquin County Superior Court set forth local policies and procedures of the probate department. These rules do not attempt to restate or summarize statutory or case law or estate administration in general. Guidance on probate law and practice

may be found in publications such as California Decedent Estate Practice, California Trust Administration, and California Conservatorship Practice, which are published by CEB, Continuing Education of the Bar - California.

These rules, although binding on parties, may be departed from at the discretion of the Court.

- B. Contact Information. Website: For current contact information, tentative rulings, and the online probate calendars, parties should refer to the court's website at: www.sicourts.org. All local forms referred to in this rule are available and can be downloaded from the court website. (Hover over the "Forms and Filing" tab on the court's home page, then "Local Forms" in the drop-down menu.)

The following may be helpful in matters presented to the Probate Court:

Clerk of the Probate Court: The physical address of the Probate Clerk is 180 E. Weber Avenue, Fourth Floor, Stockton, CA 95202. The mailing address is Superior Court of California – San Joaquin, Probate Department, 180 E Weber Avenue, Suite 416, Stockton, CA 95202.

C. Pleadings / Calendaring

1. Petitions with all supporting papers, except the Notice of Hearing and or proof of service, ~~must shall~~ be on file ~~four weeksthirty (30)~~ calendar days before the hearing date. Failure to file all required paperwork in the time limits specified in this section, or sections 2 and 3 immediately below, may result in the hearing being continued.
2. Notice of Hearing and or proofs of service for the initial petition shall be filed with the Clerk at least ten (10) court days prior to the day of hearing. Any other proofs of service shall be filed with the Clerk contemporaneously with the papers to which they pertain; ~~Failure failure~~ to contemporaneously file a proof of service with a document ~~may shall~~ result in the document being rejected for filing.
3. Proofs of Publication shall be filed with the Clerk at least five (5) court days prior to the day of hearing.
4. Matters involving the Public Defender, or the Public Conservator, must be set for hearing Tuesdays or Thursdays only, unless a stipulation for another day, signed by the Public Defender and or

Public Conservator is filed at the same time as the initial petition.
(Eff. 01/01/20; Rev. 01/01/23; Rev. 07/01/23)

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.
- 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-~~****~~006 "Declaration Re: Notice of Ex-Parte

Application” must be used and if needed form SJPR-****006A
“Attachment to Declaration Re: Notice of Ex-Parte Application.”

- E. Counsel requesting the waiver or shortening of any notice time periods prescribed by the Probate Code must submit a declaration 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-****006
“Declaration Re: Notice of Ex-Parte Application” must be used.
- 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.
- 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.
- 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.
- I. The Clerk may reject Petitions that do not comply with the subsections above. (Eff. 01/01/20; Rev. 01/01/23)

4-107. ADDITIONAL INFORMATION REQUIRED LINEAL CHART / HEIR INFORMATION / PROOF OF DEATH (Eff. 07/01/21)

- A. Where any petition calls for the relationship of the heirs or devisees, including but not limited to a Petition for Probate, Petition to Determine Succession to Real Property, An Affidavit re Real Property of Small Value or a petition under Probate Code section 850, a chart of lineal descent must be included. If any beneficiary named in the Will, Trust or other document has predeceased or post-deceased the testator, the fact must be stated. The information shall be provided using local form Lineal Chart A (SJPR-203), Lineal Chart B (SJPR-204) and/or Lineal Chart C (SJPR-205).
- B. Where any petition calls for family members, or heirs and his or her address to be listed, the individual’s name shall be listed, the individual’s relationship to the decedent, settlor, conservatee and/or

ward, and where an address would be listed “Deceased” shall be listed if the individual is deceased.

B.C. Whenever family members, or heirs are listed as “Deceased”~~in~~ addition, proof of death is required. Proof of death can be established by, but is not limited to, a death certificate, an obituary, or a declaration. (Eff. 01/01/20; Rev. 07/01/22; Rev. 01/01/2023; Rev. 07/01/23)

4-109. WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING

- A. In the following cases a copy of the petition, and any related declarations regarding attorney’s fees, if applicable, ~~as well as a copy of the Notice of Hearing~~, must be served on all interested parties with the Notice of Hearing:
1. Where the petition contains the accounting of a trustee, personal representative, conservator or guardian, or
 2. Where a fiduciary or attorney is requesting extraordinary fees or commissions.
- B. A courtesy copy of the petition which includes an accounting shall be submitted to the Probate Clerk for the probate examiner at the time the original is filed or within 5 court days of filing, if electronically filed, marked in red in the upper left-hand corner “Examiner’s Copy.” (Eff. 01/01/20; Rev. 07/01/22; Rev. 01/01/2023)

4-114. PROBATE PETITIONS CONFIRMING PROPERTY (Eff. 01/01/20)

- A. Any petitioner requesting an order concerning title to real property held in whole or in part by the decedent, conservatee, settlor or other party shall attach to the petition a copy of all deeds by which the decedent, conservatee, settlor or other party acquired title. Petitions concerning title shall include, but are not limited to Probate Code 850, Probate Code 13150 et seq. (Petition to Determine Succession to Real Property, form DE-310), or Probate Code 13650 et seq. (Spousal or Domestic Partner Property Petition, form DE-221).
- B. Whenever a petition is filed under the authority of Probate Code §850, et seq, which seeks to establish the owner of an interest in property, the petition shall plead facts which establish the claimed ownership interest, and list the person(s) to be served pursuant to Probate Code §851, including, but not limited, to the following persons:

1. Each person claiming an interest in or having title to, or possession of, the property,
 2. Each known intestate heir,
 3. Each known devisee whose interest in the property would be affected.
 4. The list of persons to be served shall include the individual's name, relationship and address.
- C. The petition shall set forth the form of record title and character of ownership at all relevant times covered by the petition.
- D. If the form of record title is based on a written document, a copy of the document shall be filed with the petition. (e.g., copy of all relevant deeds, copy of bank statement(s) or stock certificate(s)/statement(s), etc.) (Eff. 01/01/20; Rev. 07/01/22)

4-116. MEET AND CONFER REQUIREMENT (Eff. 01/01/20)

- A. In the event of any contest or objection to any petition on the probate calendar, the parties or their respective attorneys shall make a reasonable and good faith attempt to informally resolve the controversy at a face-to-face conference or video conference, if possible, otherwise by telephone conference, before any hearing of the contested petition.
- B. Within 30 days after service of any responsive pleading by the first respondent, and thereafter as each respondent objects and/or opposes, the parties must meet and confer as stated in A above, for the following purposes:
1. To discuss facts which are presently available to support the allegations of the pleadings filed by each party.
 2. To discuss possible settlement of the action including, but not limited to, possible arbitration or mediation.
 3. To exchange preliminary schedules of discovery.
- C. The parties must file a joint Meet and Confer Statement (parties may use local form SJPR-002) within 45 days after service of the responsive pleading. It will be the responsibility of the petitioner to arrange the conference and to prepare the joint statement, including areas of disagreement. (Eff. 01/01/20; Rev. 07/01/22)

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-~~****~~-007 "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.
- F.** 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)

4-202. COPY OF TRUST REQUIRED FOR POUR-OVER WILLS (Eff. 07/01/21)

Where notice is required to be given pursuant to Probate Code section 1208(b), such as where a trust is a beneficiary of a decedent's estate, the petitioner shall file separately from the petition as a confidential document a true and correct copy of the trust, including any amendments, disclaimers, and

any directions or instructions to the trustee that affect the disposition of the trust.

The confidential document shall be filed using the court's mandatory local form Confidential - Trust Documents Coversheet (SJPR-~~304100~~) as the cover page. The confidential document shall not be released to any party absent a prior order of the court.

[Eff. 07/01/2021; Rev. 07/01/22; Former 4-202 Repealed 01/01/20]

4-215. ~~REQUIRED ALLEGATIONS IN REQUIREMENTS FOR A PETITION FOR FINAL DISTRIBUTION~~ (Eff. 01/01/14)

Mandatory local form SJPR-208 "Account or Waiver of Account and Report of Personal Representative; Petition for Final Distribution and for Payment of Statutory Compensation and Extraordinary Compensation" and Order for Account or Waiver of Account and Report of Personal Representative; Petition for Final Distribution and for Payment of Statutory Compensation and Extraordinary Compensation" SJPR-2008A, shall be used for any petition to approve an account and/or report of a personal representative and any request for preliminary and/or final distribution. ~~In addition to other items required by law, a~~ petition for final distribution shall contain the following:

- A. Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.
- B. If there is insufficient cash available to pay the statutory commissions, attorney fees, court costs, and any other items requested to be ordered by the Court to be paid, the Petition must include a statement setting forth the source of the funds for such payment.
- C. A schedule showing the pro-ration of fees and costs if there are two or more attorneys or Personal Representatives, and the Court is being asked to determine the proration of the fees and costs, if applicable. The schedule shall information substantial similar to the requirements of California Rule of Court 7.702.
- D. ~~The Federal Estate Tax has been paid, or, the Federal Estate Tax has not been paid because the estate is too small to require payment of tax, or, the Federal Estate Tax has been deferred by agreement with the taxing agencies. If deferred, whether a lien has been imposed, and pertinent information about the lien.~~

D. When proration is required by Probate Code Section 20111, the accompanying account should include a schedule indicating the method by which the proration has been computed.

~~E. One of the following allegations concerning creditor's claims:~~

~~F. A notice to creditors was given, in the form prescribed by the Probate Code, to all known and reasonably ascertained creditors of the estate; or~~

~~G. Notice to creditors was not required because of the provisions of Probate Code Section 9054; or~~

~~H. No notice to creditors was given because there were no known or ascertainable creditors.~~

~~I. A Proposed Distribution Schedule setting forth in detail the specific items and/or property being distributed to each heir/distribute including approximate dollar values if distributing cash.~~

~~J. A statement of the community or separate property status of all assets to be distributed.~~

~~K. If the personal representative or the attorney for the personal representative is seeking reimbursement for costs in excess of \$1,500.00, an itemization of those costs must be set forth.~~

L.E. When applicable, the following allegations should also be included in the petition for final distribution:

1. Distribution to Minor(s)

When distribution is to be made to a minor a guardian of the estate is ordinarily required and a current certified copy of the letters of guardianship should be attached to the petition. When distribution is proposed to be made under Probate Code sections 3400 through 3402 or under section 3410, the Petition for Distribution must meet the requirements of the statute.

A decree ordering distribution to minor shall provide that the property be distributed to the fiduciary or other person approved by the court on behalf of the distributee and identify under what authority. The fiduciary or other person shall sign the distributee's receipt and identify under what authority the fiduciary or other person acts.

2. Distribution to a Conserved Person

A decree ordering distribution to a conservatee shall provide that the property be distributed to the conservator of the estate. The conservator of the estate shall sign the distributee's receipt identified as the conservator of the estate for the distributee.

3. Distribution to Trust(s)

- a. If distribution is to be made to a trust already in existence, an acknowledged statement by the trustee accepting the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be accompanied by a petition by the personal representative for the appointment of a substitute trustee.
- b. If distribution is to be made to a testamentary trust set up by the decedent's Will, the terms of the trust and the powers of the trustee must be set out in full in the decree of distribution, and not merely incorporated by reference. When appropriate, the language of the Will should be paraphrased in the decree to eliminate references to "my" and to substitute "the decedent's".

4. Distribution to Assignee(s)

If distribution is to be made pursuant to an assignment of interest, the assignment must be filed and the details of the consideration, if any, set forth in the petition. The assignment must be acknowledged before a notary public.

5. Distribution Pursuant to Agreement

If the distribution is sought other than as provided by the Will or by the laws of intestate succession, that fact should be alleged, and a written agreement must be filed signed by all distributees and acknowledged before a notary public.

NOTE: If a distributee is a minor or conservatee, the agreement must be signed by that party's appointed legal representative. Court approval of a fiduciary's agreement must be provided with the distribution petition or a petition for approval or the agreement may

be noticed for hearing together with the petition for distribution. (Eff. 01/01/14; Rev. 07/01/22 [and 07/01/24](#))

4-217. 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-[****207](#) "Waiver of Accounting." (Eff. 01/01/24)

4-301. PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME (Eff. 01/01/20)

If a Will contains a period of survival as a condition precedent to the spouse's or beneficiary's right to receive assets, the petition [for a preliminary or final distribution](#) cannot be heard until the survival period has expired. (Eff. 01/01/20; Rev. 7/1/2021)