

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

Probate Rule Changes

4-107. ADDITIONAL INFORMATION REQUIRED

- 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 petitioner under Probate Code section 850, a chart or list of lineal descent must be included. If any beneficiary named in the Will, Trust or other document has predeceased the testator, the fact must be stated. The information shall be provided using local form Lineal Chart A (SJPR-302), Lineal Chart B (SJPR-303) and/or Lineal Chart C (SJPR-304).
- B. Where any petition calls for family members, or heirs and his or her address to be listed, the individuals name shall be listed and where an address would be listed “Deceased” shall be listed. 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 declaration. (Eff. 01/01/20; Rev. 07/01/21)

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

- B. A courtesy copy of the petition which includes an accounting shall be submitted to the Probate Clerk for the court 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 Cop.” (Eff. 01/01/20; Rev. 07/01/21)

4-111. REQUESTING A CONTINUANCE

- A. Continuance of initial hearing
- The first hearing on a matter may be continued to enable the petitioner to correct defective pleadings or procedural issues identified in the probate notes. The continuance can be made by the petitioner as listed below, or by the Court on its own motion, even if no request for a continuance is made.
- B. Continuance or dismissal after initial hearing
- All requests by the petitioner to continue subsequent hearings after the initial hearing must be done by a declaration or an appearance at the hearing, a continuance of a subsequent hearing may not be secured by a request to the clerk.

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

After the initial hearing, the Court may drop or dismiss the matter unless the petitioner shows good cause for a further continuance, by a filed declaration or an appearance at the hearing.

C. Contested hearings may be continued by Stipulation and Order

Before the Stipulation and Order is submitted to the court, Counsel or a self-represented party must call the courtroom clerk to obtain a new date. The Stipulation must be signed by all parties who have appeared in the matter. This is for hearings only; any continuances of a trial must be done by a motion and comply with California Rules of Court, Rule 3.1332.

D. Dropped or Dismissed Matters

Dropped matters must be renoticed after it has been placed back on calendar. A matter dismissed must be refiled and noticed anew.

E. Nothing in this rule shall excuse any party from complying with the notice requirements of the Probate Code or the California Rules of Court. (Eff. 01/01/20; Rev. 07/01/21)

4-114. PROBATE CODE 850 PETITIONS CONFIRMING PROPERTY

C. 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 deed, copy of bank statement or stock certificate/statement, etc.) (Eff. 01/01/20, Rev. 7/01/2021)

4-117. TELECONFERENCE NOTICE

When noticing any hearing, motion application or request in the probate department a copy of local form, Notice of Teleconference Appearance and Requirements (SJPR-001) must be attached to the Notice of Hearing or served separately and the proof of service completed.

4-118. NOTICE INFORMATION IN PLEADING

All probate petitions presented to the court on pleading, including but not limited to a petition for final distribution, petition for approval of an accounting, a petition under Probate Code section 850, must include the names, relationship, and address for service for all parties entitled to notice.

4-202. CONFIDENTIAL FILING OF TERMS OF THE TRUST

Formatted: Underline

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 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 (PRSJ-301) as the cover page. The confidential document shall not be released to any party absent a prior order of the court.

Formatted: Font color: Auto

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

PART THREE

SPOUSAL PROPERTY AND SMALL ESTATE PROCEEDINGS

4-301. PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME

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 cannot be heard until the survival period has expired. (Eff. 01/01/20; Rev. 7/01/21)

4-303. SMALL ESTATE WITHOUT ADMINISTRATION DEPOSIT OF WILL

- A. If a Petition to Determine Succession to Real Property (Probate Code 13150 et seq) or Spousal Property Petition (Probate Code 13500 et seq) or Affidavit for Real Property of Small Value (Probate Code 13200) is based upon the decedent's Will or codicil, the Will or codicil shall be deposited with the court prior to or concurrent with the filing of the petition.
- B. An original Will shall be deposited with the court pursuant to Probate Code section 8200.
- C. If the original Will has deposited with a foreign jurisdiction, a duly authenticated copy of the Will shall be filed as an attachment to the petition.
- D. If the original Will is lost, a copy of the lost Will or document setting forth the terms of the lost Will shall be filed as an attachment to the petition. The attachment shall clearly indicate that the original Will is lost, and shall be accompanied by a declaration addressing the presumption of revocation under Probate Code section 6124. (Eff. 07/01/21)

4-304. AFFIDAVITS FOR REAL PROPERTY SMALL VALUE

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL
RULES – EFFECTIVE 07/01/21

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

- A. If the decedent died testate, a statement using mandatory local form Declaration in Support of Affidavit re Real Property of Small Value (SJPR-305) identifying that the decedent died testate and an executed copy of the Will; or
- B. If the decedent died intestate, a statement using mandatory local form Declaration in Support of Affidavit re Real Property of Small Value (SJPR-305) identifying the relationship of the heir(s) which establishes the affiant's claim to entitlement. (Eff. 07/01/21)

PART FOUR

TRUSTS

4-401. FEES

- A. This rule applies to all trusts subject to the continuing jurisdiction of the court, to any petition for approval of trustee compensation, and to any objection to petitions for trustee compensation.
- B. If the petition for trustee's or attorney's fees is part of a petition seeking other relief, the title of the petition in the caption shall include a reference to the request for fees and shall be included in the notice of hearing.
- C. Trustee's Fees: In the absence of a formula in the trust for fees, Trustee compensation shall be presumed reasonable if it does not exceed 1% (one percent) per year of the asset value of the estate on the date of the close of the account for a professional trustee or three-fourths of one percent per year for a non-professional. However, nothing in this rule limits the court's discretion to find as unreasonable a fee totaling less than or more than the percentages listed above. If the account period contains more or few than twelve months, the normal fee will be proportionately increased or decreased.
- A trustee who seeks greater compensation than the presumed reasonable fee set out in the paragraph immediately above, must detail in a separate declaration facts that would justify the request pursuant to section 4-401F below.
- F. An attorney or trustee who seeks greater compensation than the presumed reasonable fees listed in Section C and or E above shall provide a detailed declaration, separate from the petition outlining the requested the fees. The petition shall provide the information required in California Rules of Court 7.776

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

and provide information similar to CRC 7.702(1)-(6), including if more than one category of services was rendered, the services, must be separately stated and the date and description of services rendered and the hourly rate of each person who performed the services and the hours spent by each of them. (Eff. 01/01/20; Rev. 07/01/21)

4-402. REPORT OF TRUSTEE INCLUDING SPECIAL NEEDS TRUSTEE

- D. The investment objectives and results with reference to the purposes of the trust, when appropriate (Required for a special needs trust)
- E. A statement of the percentage rate of return on all property invested. The purpose of the report is to provide a brief summary of the account measured in terms of the specific trust objectives and requirements. It should not merely recite what has been done, but should relate the activities reflected in the account to the purposes and persons for which the trust was created, when appropriate. (Required for a special needs trust)
- F. In the case of a trust expected to last over a beneficiary's lifetime, a statement with sufficient detail establishing that at the current rate of return and the current rate of distribution the trust corpus will be preserved for the anticipated lifetime of the beneficiary (Requested for a special needs trust) (Eff. 01/01/09; 07/01/21)

PART FIVE

CONSERVATORSHIP

4-501. APPOINTMENT OF COURT INVESTIGATOR

- B. A courtesy copy of a petition which requires a report from the probate investigator shall be submitted to the Probate Clerk for the court investigator 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 “Investigator’s Copy.” (Eff. 01/01/20; Rev. 07/01/21)

4-502. CONSERVATORSHIP QUESTIONNAIRE

- A. A Confidential Conservatorship Questionnaire (SJPR-207) shall be completed, signed under penalty of perjury and submitted with all petitions for conservatorship. Each proposed conservator shall sign the Conservatorship Questionnaire. The Conservatorship Questionnaire is used by the court and/or by

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL
RULES – EFFECTIVE 07/01/21

the San Joaquin Court Investigator to prepare reports under Probate Code 2253 or as ordered by the court. The Questionnaire and the information contained on the Questionnaire are confidential. The Conservatorship Questionnaire shall not be released to any party or their attorney absent a court order. The clerk must maintain the Conservatorship Questionnaire in a manner that will protect and preserve the proposed conservator's confidentiality.

B. This rule shall apply to conservatorship cases only and not to guardianship cases. (Eff. 07/01/21)

[Eff. 07/01/21; Former 4-502 Repealed 01/01/20]

4-504. STATUS REPORTS

A. At least 30 days before a review hearing, the conservator of the person only shall complete and return the Conservatee Status Report-Person Only (SJPR-106) or the conservator of the person and Estate or estate only shall complete and return the Conservatee Status Report-Person & Estate (SJPR-107).

B. This rule shall apply to conservatorship cases only and not to guardianship cases.

[Eff. 07/01/21; Former 4-504 Repealed 01/01/20]

4-505. COMPENSATION AND FEES

A. Compensation of Conservator/Guardian

1. Conservator/Guardian of the estate or of the person and estate

A fee will be routinely allowed by the court at the time an annual accounting is filed for services during the preceding twelve-month period of three-fourths of 1% of the market value of the assets on the date of the current accounting.

(a) If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased.

(b) A fiduciary who seeks greater compensation must detail in separate declaration facts that would justify the entire fee request. If unusual services were rendered in more than one category, the services must be separately slated and a value assigned to each.

(Rev. 07/01/21)

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL
RULES – EFFECTIVE 07/01/21

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL
RULES – EFFECTIVE 07/01/21

PART SEVEN

GUARDIANSHIP

4-702. GUARDIANSHIP QUESTIONNAIRE

RELATIVE AND NON-RELATIVE GUARDIANSHIPS OF THE PERSON AND/OR
ESTATE

- A. The Confidential Guardianship Questionnaire (SJPR-010) shall be completed, signed under penalty of perjury, and submitted with all petitions for probate guardianship. Each proposed guardian shall sign the Guardianship Questionnaire. The Guardianship Questionnaire is used by the court and/or by the San Joaquin Court Investigator to prepare reports under Probate Code 1513 or as ordered by the court. The Questionnaire and the information contained on the Questionnaire is confidential. The Guardianship Questionnaire shall not be released to any party or their attorney absent a court order. The clerk must maintain the Guardianship Questionnaire in a manner that will protect and preserve the proposed guardian's and the minor's confidentiality.

[Eff. 07/01/21; Former 4-702 Repealed 01/01/20 Incorporated into 4-703]

4-804. ATTACHMENT LIMITS

The attachments to any Petition or Expedited Petition for compromise for a minor or incapacitated person shall not exceed 50 pages without authorization from the court. Any petitions received in excess of the page limit, without authorization, shall be rejected.

[Eff. 07/01/2021. Former 4-804 Repealed 01/01/20]

Family Law Rule Changes

7-109. RESULT OF FAILURE TO COMPLY WITH RULES

- (c) The award of attorney's fees and costs against the non-complying party and/or the party's attorney, without the necessity of filing an Income and Expense Declaration, or any request for order, including, but not limited to, a motion under California Code of Civil Procedure §128.5 or Family Code §§270 through 275.

7-114. COURT COMMUNICATION RULES FOR DOMESTIC VIOLENCE AND CHILD
CUSTODY AND/OR VISITATION ORDERS

- A. Court Communication

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

Until the court has an operational case management system capable of automatically coordinating domestic violence orders, the court’s criminal, family, and juvenile law departments shall, to the best of their abilities, communicate with one another to identify families with existing orders.

7-115. VIDEOCONFERENCE APPEARANCE

C. Application.

This rule applies to any matter to be heard in a family law department, subject to the approval of the judicial officer. This rule will sunset on June 30, 2021.

7.116. TELEPHONIC APPEARANCE AT HEARING

A. Telephonic Appearance at Hearing

Unless otherwise prohibited by law and, subject to the judicial officer’s approval, parties may appear or present testimony by telephone conference at hearings in family law matters. The requesting party must file and serve an Ex Parte Application for Telephonic Appearance at Hearing and Order (SJ-FL-005) at least ten (10) days prior to the date the matter is initially set for hearing. Any objections to the application must be filed and served no later than five (5) days after service of the Application. Thereafter, the Court will rule on the Application or set the matter for hearing on the Application.

The application form is available online at the court's website or in the clerk's office. Telephonic appearances will be arranged through the Court’s Information Technology Department. Fees will be paid by the requesting party to the Court.

In accordance with California Rules of Court Rule 3.670, a party may not appear by telephone conference at the following hearings:

- (a) Trials, hearings, and proceedings at which witnesses are expected to testify;
- (b) Hearings on temporary restraining orders;
- (c) Settlement conferences; and
- (d) Orders to Show Cause for sanctions.

In addition, you may not appear by telephone conference for contempt matters.

B. Definitions

(1) “Remote telephonic appearance” means a party or an attorney may appear remotely through the use of:

- (a) Any telephone with video camera capabilities that depict the parties, attorneys, the

Field Code Changed

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

court, witnesses, and court personnel, if any, in real time on a screen visible to the user who is at another location; and with capabilities to allow for transmitting the user's image and voice; or

- (b) A tablet with video camera capabilities that depict the parties, attorneys, the court, witnesses, and court personnel, if any, in real time on a screen visible to the user who is at another location; and with capabilities to allow for transmitting the user's image and voice.

C. Application

This rule applies to any matter to be heard in a family law department, subject to the approval of the judicial officer. This rule will sunset on June 30, 2021.

D. Procedure

- (1) The court must ensure that the statements of participants are audible and/or visible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant.
- (2) The party, attorney, or witness must timely join the telephone conference hearing at least 10 minutes prior to the scheduled hearing. Do not announce your presence until the Court calls your case. Simply stay on the telephone line, even if there is only silence, until the Commissioner/Judicial Officer starts the hearings, and then continue to listen quietly until your case is called. The Commissioner/Judicial Officer will conduct a roll call and if you are not present, your matter will be dropped from the calendar or reset. Until your case is called, refrain from speaking.
- (3) The party, attorney, or witness must provide the Court with their mobile phone number and email address at the time of the hearing. A party, attorney, or witness shall register his/her email address and mobile phone number with the Court through the Online Services, Attorney Registration page on the Court's website. You do not need to be an attorney to register.
- (4) Parties must first identify themselves whenever speaking and only one party at a time may speak and must pause prior to speaking in case there is any audio lag.
- (5) No child(ren) or third parties shall be present for the hearing; only the parties, their attorneys, and witnesses.
- (6) Any and all documents a party/attorney wants the court to consider shall be submitted with a party's moving/opposition papers 5 court days prior to the hearing. In the event the court requires a party/attorney to submit a document at the time of the hearing, the party/attorney must send the document in a .pdf format to the court at familycourtclerks@sjcourts.org, and must copy all counsel of record and self-represented parties on that email. The case name, number, and hearing date must be stated in the subject

Field Code Changed

PROPOSED CHANGES TO SAN JOAQUIN SUPERIOR COURT LOCAL RULES – EFFECTIVE 07/01/21

line of the email and the other party or their attorney must be copied (cc'd) in the email or the court will not consider the document as it is an ex parte communication.

- (7) For matters heard in department #5A, parties must provide any documents they want the court to consider prior to the hearing and must provide copies to the other side. Any documentary evidence the parties wish the bench officer to consider must be emailed directly to the other party or that party's attorney, if represented, and, if the matter is a DCSS matter, then to DCSS at least five days prior to the hearing, excluding any Saturday, Sunday, or holiday as provided for under Code of Civil Procedure section 135. Failure to provide at least five court days' notice of proffered documentary evidence may result in a continuance to another court date and/or its exclusion. If no email exists for the opposing party or counsel, alternative methods of service must be used (e.g., text, mailing, or instant message). The bench officer will determine the sufficiency of any such alternative service method. If there is a document the Commissioner/Judicial Officer requires you to submit the day of the hearing, you must send the document to the court at familycourtclerks@sjcourts.org. The case name, number, and hearing date must be stated in the subject line of the email and the other party or their attorney must be copied (cc'd) in the email or the Commissioner/Judicial Officer will not consider the document as it is an ex parte communication.
- (8) These telephone conference hearings may be abbreviated due to the limited ability to hear evidence under these circumstances. The Commissioner/Judicial Officer may make interim orders and your case could be continued for additional consideration at a later date.
- (9) Any recording of the telephone conference is absolutely prohibited. Violation of these prohibitions may result in sanctions, including removal of court-issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.

7.117. INTERVIEW FOR MINOR TO MARRY OR ENTER DOMESTIC PARTNERSHIP

In order to properly conduct the interview required under CRC Rule 5.448(c), any minor requesting to marry or establish a domestic partnership must complete and submit the Underage Marriage or Domestic Partnership Applicant Information form, local form number SJ-FL-009, at the time of filing the initial Request of Minor to Marry or Establish a Domestic Partnership.

Formatted: Font: 11 pt, No underline

Formatted: Justified